



of this respondent Henry D. Moorer was assigned to Henry Woolf to secure a loan on October 1, 1930, and that said Henry Woolf now the owner of Henry D. Moorer's interest in the said \$5,000 note and the interest of Henry D. Moorer in the said \$5,000 mortgage and is entitled to receive whatever interest this Court may determine is due under the said mortgage which would be termed the interest of Henry D. Moorer.

4. The interest in the \$5,000 note together with the mortgage securing the payment of same was long before the \$3,000 note was executed to the Baldwin County Bank pledged to Henry Woolf, securing the said Henry Woolf for money loaned to this respondent; that the said transaction was made in good faith for a full and valuable consideration; that should the \$5,000 note be paid according to its terms and according to the understanding with the Baldwin County Bank by the parties liable for the payment of same, there would be sufficient money to pay the said Henry Woolf and the Baldwin County Bank or J. T. Bradley, whichever, is the proper holder of the \$3,000 note.

At the time this transaction was made relative to the \$3,000 note, W. D. Stapleton was President of the Baldwin County Bank and the transaction was had with him for and on behalf of the said Bank and that during the entire time the \$3,000 note was in existence; J. T. Bradley was a director and officer of the said Baldwin County Bank.

That the Baldwin County Bank through its officers knew that the Stapleton interest in the \$5,000 note was the only interest pledged to secure payment of the \$3,000 note; that the respondent Henry D. Moorer was practically at all times in the town of Bay Minette and constantly in the Baldwin County Bank and would have gladly furnished information to the said J. T. Bradley, should he requested same; that the Court proceedings in this cause was in the office of the Register of Bay Minette and could have been examined by the said J. T. Bradley should he so desired.

The Baldwin County Bank through its officers knew the \$5,000 note was being litigated and there were many equities involved in said note and irrespective of this the Baldwin County Bank assigned or purported to assign the said \$5,000 note with the \$5,000 collateral note to J. T. Bradley, who was an

officer of the said Bank during the existence of the \$3,000 note and this was done without notice or consent on the part of this respondent.

This respondent alleges that J. T. Bradley was an officer of the Baldwin County Bank at the time of this transaction and was negligent in protecting his interest and this respondent Henry D. Moorer or his assigns should not be made to suffer due to the negligence on the part of the said Bradley.

That prior to placing the \$5,000 note with the Baldwin County Bank, this respondent Henry D. Moorer had assigned his interest in the mortgage and his interest in the note secured thereby to Henry Woolf in good faith and for a valuable consideration and that the said interest in the mortgage and note is owned and has been owned by Henry Woolf since October 1, 1930.

The respondent demands a trial by jury.

Henry D. Moorer  
Respondent.

STATE OF ALABAMA,

BALDWIN COUNTY.

Before me T. W. Richerson, Clerk of Circuit Court, Baldwin County, Alabama, personally appeared Henry D. Moorer, who being by me first, duly and legally sworn doth depose and say:

That the allegation contained in the foregoing answer are true and correct.

Henry D. Moorer

Subscribed and sworn before me

this 9th day of June, 1932.

T. W. Richerson  
Clerk of Circuit Court, Baldwin  
County, Alabama.

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Bay Minette Land Company, :  
Complainant, :

-vs- :

W. D. Stapleton, et al., :  
Respondents. :

IN THE CIRCUIT COURT OF MOBILE  
COUNTY, ALABAMA.  
IN EQUITY.

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This cause coming on to be heard and being submitted on the exceptions filed by the complainant to the report of the Special Master and for a final decree upon the pleadings, decrees pro confesso and the evidence as noted by the Register, it is ordered, adjudged and decreed by the Court:

1. That the complainant's exceptions numbered 1, 2, 3 and 4 to the Special Master's report be, and the same hereby are, sustained, and the complainant's exceptions numbered 5, 6, 7 and 8 to the Special Master's report be, and the same hereby are, overruled.

2. That the mortgage from the Bay Minette Land Company to W. D. Stapleton and Henry D. Moorner described in the original bill of complaint and introduced in evidence in the case was intended to secure, and operates to secure, a \$2,500.00 indebtedness, with interest, from the Bay Minette Land Company to Henry D. Moorner, and a \$2,500.00 indebtedness, with interest, from the Bay Minette Land Company to W. D. Stapleton, created contemporaneously with the execution of the mortgage; that the indebtedness to W. D. Stapleton secured by said mortgage bore interest at the rate of eight per cent per annum from the 8th day of December, 1928, to the 6th day of November, 1930; that the complainant, Bay Minette Land Company, is entitled to a set-off of \$3,000.00 as of November 6th, 1930, against the interest of the said W. D. Stapleton in the said indebtedness secured by the said mortgage; that the said set-off consists of the purchase price which the said W. D. Stapleton agreed to pay the complainant for a portion of the property embraced in the said mortgage, a proper deed for which said portion of said mortgaged property was tendered by the complainant to the said W. D. Stapleton and placed with the papers in this cause on the



2.

6th day of November, 1930; that the said set-off be, and the same hereby is, allowed and decreed in the said sum of \$3,000.00 as of November 6th, 1930; that after allowing the said set-off there remains due and owing by the said W. D. Stapleton to the complainant, Bay Minette Land Company, the sum of \$130.09, with interest from November 6th, 1930, for which judgment is hereby rendered in favor of the Bay Minette Land Company against W. D. Stapleton, and for which let execution issue, and that the Register of this Court is hereby ordered and directed to enter upon the margin of the record of the said mortgage the fact that there has been paid on account of the principal of the indebtedness secured thereby the sum of \$2,500.00, and also all interest on said sum of \$2,500.00.

3. That the following payments were made by Bay Minette Land Company to the said Henry D. Moorner on account of its said indebtedness to him, namely: \$200.00 paid on July 27th, 1929, \$100.00 paid on May 30th, 1930, and \$68.09 paid on June 25th, 1930, and that there remains due upon the said mortgage indebtedness originally owing by the said Bay Minette Land Company to the said Henry D. Moorner, and including interest to the date of this decree, \$2,842.66, which stands secured by the said mortgage.

4. That, because of said purchase by the said Stapleton, the protection and enforcement of the rights and equities of all interested parties require that the mortgaged premises be divided into two separate parcels for the purposes of this decree, one, hereinafter designated as Parcel No. 1, to consist of all of the mortgaged premises except the portion thereof which was so conveyed to W. D. Stapleton by the complainant, and the other, hereinafter designated as Parcel No. 2, to consist of that portion of the mortgaged premises which was so conveyed to the said Stapleton; that the description of said Parcel No. 1 is as follows:

Lot Numbered 7 in Block Numbered 1; all of Block Numbered 2; all of Block Numbered 3 and all of Lot Numbered 6 in Block Numbered 1 except the following described property:

Commencing at the Northeast Corner of said Lot 6 run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet; thence Westwardly and parallel with the North line of the said Lot Six 155 feet; thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of the said Lot 6; thence Eastwardly along the North line of the said lot 6 to the point of beginning; all in Ft. Morgan Addition to Bay Minette, Alabama, a subdivision of a part of the East half of the Northeast Quarter of Section Sixteen (16) Township Two (2) South Range Three (3) East in Baldwin County, Alabama, according to the official plat thereof of record in Map Book Number 1 at page 127 in the Probate Records of Baldwin County, Alabama.

that the description of Parcel No. 2 is as follows:

.... All that portion of the East half of the Northeast Quarter (E $\frac{1}{2}$  of NE $\frac{1}{4}$ ) of Section Sixteen (16), Township Two (2) South, Range Three (3) East, being all of Lots One (1), Two (2), Three (3), Four (4), Five (5), Eight (8), Nine (9), Ten (10) and Eleven (11) and that part of Lot Six (6) described as follows: Commencing at the Northeast corner of the said lot Six (6), run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet, thence Westwardly and parallel with the North line of said lot Six (6) 155 feet, thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of said lot Six (6), thence Eastwardly along the North line of said Lot Six (6) to the point of beginning, all in Block One (1) as shown on that map entitled Ft. Morgan Addition to Bay Minette, made by D. F. Albin, Engineer, dated June 12th, 1929 and filed for record June 14th, 1929, in the office of the Probate Judge of Baldwin County, Alabama.

Also all and the entire right, title and interest conveyed by Bay Minette Land Company to W. D. Stapleton in and to the oil track spur and that portion of the side track along the B. M. & Ft. M. Branch of the L & N Railroad Company lying opposite the Ft. Morgan Addition to the Town of Bay Minette, lands of Peoples Fertilizer Company and the land adjoining Peoples Fertilizer Company on the North, insofar as such tracks are North of the South line of the real estate hereinabove-described, together with all rights and monies to become due under rental agreement with the Pan American Petroleum Corporation after the 6th day of November, 1930.

5. That under date of November 2nd, 1931, the said Henry D. Moorer executed to Baldwin County Bank his promissory note for \$3,000.00, payable on January 2nd, 1932, with the \$5,000.00 note of the said Bay Minette Land Company, dated December 8th, 1928, and payable to W. D. Stapleton and Henry D. Moorer, and endorsed by both of said payees, attached as collateral security to the said \$3,000.00 note of the said Henry D. Moorer; that before its maturity and for a valuable consideration the said Baldwin County Bank sold and endorsed to the respondent and cross-complainant, J. T. Bradley, the aforesaid \$3,000.00 note of the said Henry D. Moorer; that the said note is still owned

and held by the said J. T. Bradley; that nothing has been paid on account thereof; that the full amount thereof, namely, \$3,000.00, together with interest thereon at the rate of eight per cent per annum from January 2nd, 1932, making a total of \$3,137.35, is owing by the said Moorner to the said Bradley and is secured by the hypothecation of all interest of the said Moorner in or under the said \$5,000.00 note of the said Bay Minette Land Company; and that by virtue of the said pledge and hypothecation to him of the said \$5,000.00 note of the said Bay Minette Land Company the said J. T. Bradley is entitled to and shall be paid all sums which may be paid into this Court by the said Bay Minette Land Company in payment or redemption of the said \$5,000.00 mortgage, or which, up to \$3,137.35 with interest from this date, may be realized from a foreclosure of the said mortgage as to the said Parcel No. 1 as hereinafter ordered in the event that the said Bay Minette Land Company does not so redeem.

6. It is further hereby ordered, adjudged and decreed that the said Bay Minette Land Company is hereby allowed sixty days from this date within which to pay to the said J. T. Bradley, or to pay to the Register of this Court for his account, as in full settlement of the balance of the indebtedness of complainant secured by said mortgage and as in redemption from the said mortgage of the lands hereinabove described as Parcel No. 1, the aforesaid sum of \$2,842.66, together with interest thereon at eight per cent per annum from this date to the date of payment, and upon the payment of said sum by the Bay Minette Land Company to the said J. T. Bradley, or to the Register of this Court for his account, the Register of this Court is hereby ordered to enter upon the margin of the record of the said mortgage as the same appears upon the mortgage record of Baldwin County, Alabama, and also upon the records of this Court, full satisfaction of the said mortgage as to the above described Parcel No. 1.

7. It is further ordered, adjudged and decreed by the Court that in the event that the said Bay Minette Land Company fail to fully pay and satisfy the said balance of \$2,842.66,

with interest from this date at eight per cent per annum, with-  
in the sixty days herein allowed therefor, the Register of this  
Court, after giving notice as required by law of the time,  
place and terms of said sale, shall sell at public auction to  
the highest bidder for cash, in front of the Court House door  
of Baldwin County, Alabama, as a separate parcel, all of the  
lands embraced in Parcel No. 1 as hereinabove described, and,  
as another separate parcel, all of the lands embraced in Parcel  
No. 2 as hereinabove described; that with dispatch the Register  
shall report to this Court his acts and doings in the premises  
for such further orders and decrees as may be appropriate;  
that upon the confirmation of said sales the Register shall  
pay over the proceeds of the sale of Parcel No. 1 to the said  
J. T. Bradley up to, but not exceeding, the aforesaid sum of  
\$2,842.66, with interest thereon at the rate of eight per cent  
per annum from this date; that if any of said proceeds then  
remain, he shall pay the same over to the complainant, Bay  
Minette Land Company; that from the proceeds of the sale of  
Parcel No. 2 the Register first shall pay the entire costs of  
this cause, which costs are hereby taxed against the respondent  
Stapleton and made a first lien or charge upon said Parcel 2,  
and next shall pay to the complainant the aforesaid sum of  
\$130.09 with interest thereon from November 6th, 1930, which  
is hereby decreed to be secured by a vendor's lien on said Par-  
cel No. 2, subject only to the payment of the costs of this  
cause as hereby decreed; that the Register then shall pay over  
to the said J. T. Bradley the remainder, if any, of the pro-  
ceeds of the sale of Parcel No. 2 up to, but not exceeding, such  
amount as being added to the amount received by the said Bradley  
from the proceeds of the sale of Parcel No. 1 will make a total  
of the aforesaid sum of \$3,137.35, with interest from this date,  
owing to him by the said Henry D. Moorner as is above decreed;  
and that if any of said proceeds of the sale of Parcel No. 2  
then remain the same shall be paid to the said W. D. Stapleton.

8. That in the event that the complainant redeem Parcel

No. 1 pursuant to the provisions in that behalf herein appearing, then at the expiration of sixty days from this date the Register shall proceed to advertise and sell Parcel No. 2 in compliance with the foregoing provisions for a foreclosure of that parcel, unless prior thereto the respondent W. D. Stapleton shall have paid all of the costs of this cause as taxed by the Register, shall have paid to the Register for the complainant the aforesaid sum of \$130.09 with interest thereon from November 6th, 1930, and shall have paid to the Register for the said J. T. Bradley the excess, with interest thereon, of the amount, namely, \$3,137.35, to which the said Bradley is entitled as the holder of said note of the said Moorer over the amount paid by the complainant in redemption of Parcel No. 1; that the making of all of said payments by the defendant Stapleton within the time above limited shall operate as a redemption by him of said Parcel No. 2; and that in the absence of such redemption the said Parcel No. 2 shall be sold by the Register in the method and for the purposes herein decreed.

9. That the aforesaid deed of the Complainant to the Defendant, W. D. Stapleton, tendered to him on November 6th, 1930, as aforesaid, and refused by him, which tender has been kept good by placing the said deed in the files in this cause for the said Stapleton, where it still remains, is hereby decreed to vest in him, but subject to all liens herein decreed, all of the complainant's title, both legal and equitable, in and to the premises described in the said deed; that the legal title to said premises, subject to all liens thereon herein decreed, is hereby vested in the said W. D. Stapleton; that the Register of this Court be, and he is hereby, ordered to cause said deed to be recorded in the office of the Probate Judge of Baldwin County, Alabama, and to tax the expense thereof as a part of the costs of this cause; and that thereafter the Register do deliver the said deed to the said W. D. Stapleton.

10. That although the costs of this cause herein decreed against the respondent W. D. Stapleton are secured by the lien therefor hereinabove decreed, yet execution therefor may issue.

11. That all further and other matters and questions be and are hereby reserved.

Dated this 29<sup>th</sup> day of July, 1932.

J. W. Hazel  
Judge.

Know All Men By These Presents, That HAMPTON D. EWING and MARIA D. EWING, his wife, by  
Fact  
Hampton D. Ewing, her atty., in hereinafter called mortgagor, in consideration of the sum of  
Three Thousand & 00/100 . . . . . DOLLARS, to them in hand paid by

W. D. STAPLETON and HENRY D. MOORE hereinafter called mortgagee, the  
receipt whereof is hereby acknowledged, do . . . . . by these presents grant, bargain, sell and  
convey unto said mortgagee, s, their heirs

and assigns forever, all the following described real estate, to-wit: . . . . .  
Sections Seventeen (17), Eighteen (18) and Nineteen (19) in Township  
One (1) North, Range Five (5) East, containing 1920 acres, be the same  
more or less, subject nevertheless to a mortgage heretofore recorded in the  
office of the Probate Judge of Escambia County, Alabama, to Ben May, said lands  
being in Baldwin County, Alabama.

Together with all and singular the tenements, rights, privileges and appurtenances, to said describ-  
ed premises in anywise belonging, TO HAVE AND TO HOLD the same forever. PROVIDED  
ALWAYS, and these presents are upon the express condition that if the said mortgagor, s, shall  
well and truly pay to the mortgagee, s, the sum of \$3,000.00 as evidenced by two notes  
of even date herewith due and payable as follows: one note in the sum of \$2,000.00  
due and payable six months from date hereof, with interest from date at 8%; and,  
one note in the sum of \$1,000.00 due and payable six months from date hereof, . . . . .  
with interest from date at 8%

and shall also discharge all the duties imposed upon said mortgagee, s, by this mortgage, then these  
presents shall become void, otherwise to remain in full force.

In event of default in the payment at maturity of said mortgage debt, or any amount secured  
hereby, mortgagee s, are . . . . . hereby authorized to sell  
said property, at auction, for cash, after giving notice by advertisement, once a week for three con-  
secutive weeks, in any newspaper then published in Baldwin County  
Alabama

. . . . . to make proper conveyance to purchaser, and the proceeds  
of sale to apply first, to the payment of the costs of said sale, including a reasonable attorney's fee;  
second, to the payment of said mortgage debt and any sums herein provided for, the balance, if any,  
to be paid over to the said mortgagor. Mortgagee may purchase said property at such sale  
and, in that event the auctioneer conducting the sale is authorized in the name of the mortgagor,

and as their attorney in fact, to  
make deed to mortgagee . . . . . Mortgagor agrees to pay such reasonable attorneys fees as may  
be incurred by the mortgagee, in the collection of said mortgage debt, or otherwise by reason of  
any default on the part mortgagor covenants that we are seized  
in fee simple of said property, that it is free from all encumbrances, that we  
will warrant the same to mortgagee, and to the purchaser thereof, against the lawful claims of all  
persons.

IN WITNESS WHEREOF, the said mortgagor shavhereunto set . . . . . their  
hand and seal this 8th day of December A. D., 19 28

Hampton D. Ewing (SEAL)  
Maria D. Ewing (SEAL)  
by Hampton D. Ewing  
her attorney in fact

The State of Alabama,

BALDWIN

County.

I, Gladys Bush, a Notary Public

in and for said County and State, hereby certify that HAMPTON D. EWING,

whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the said conveyance, he

executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 8th day of December, 1928

Gladys Bush  
Notary Public, Baldwin County, Alabama.

The State of Alabama,

County.

I,

in and for said County and State, do hereby certify that on the        day of       , 19      , came before me the within named       , known to me to be the wife of the within named       , who being examined separate and apart from the husband touching her signature to the within conveyance acknowledged that she signed the same of her own free will and accord, and without fear, constraints, or threats on the part of her husband.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this

       day of       , 19      

THE STATE OF ALABAMA,  
BALDWIN COUNTY.

I, Gladys Bush, a Notary Public in and for said County in said State, hereby certify that Hampton D. Ewing, whose name as Attorney in Fact, for Maria D. Ewing, his wife, is signed to the foregoing conveyance and who is known to me acknowledged before me on this day that, being informed of the contents of the conveyance, he, in his capacity as such attorney in fact, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 8th, day of December, 1928.

Gladys Bush  
Notary Public, Baldwin County, Alabama.

MORTGAGE DEED

With Power of Sale.

FROM

TO

Probate Court

State of Alabama,

County

Filed in office for record this        day of       , 19      , and recorded

Judge of Probate

Moore Printing Co. Bay Minette, Ala.

This agreement made the 9<sup>th</sup> day of December, 1912, between the Bay Minette Land Company, an Alabama corporation, hereinafter called the Land Company, party of the first part, and Peoples Fertilizer and Grain Company, an Alabama corporation, hereinafter party of the second part called the Fertilizer Company, witnesseth:-

Whereas the said Land Company has this day sold the said Fertilizer Company a tract of land one hundred and fifty (150) feet square adjoining the right-of-way of the Bay Minette and Fort Morgan Railway Company for the price of Nine hundred dollars (\$900.00) and the parties to said sale understood that the said Fertilizer Company purchased said land in part consideration of the promises made by the Land Company in this agreement contained, and whereas the said Fertilizer Company expects to assign its business to a corporation about to be organized and in order that the title to said land may at the pleasure of the said Fertilizer Company be taken in the first instance in the name of the new corporation to be organized, the said Land Company has this day made its deed of the above described land with the name of the grantee thereof and the date of the deed in blank by agreement and deposited said deed with the Baldwin County Bank subject to the right of the said Fertilizer Company to take said deed on demand and fill in the name of the grantee and date said deed as of this date or any future date at its pleasure.

Now, therefore, in consideration of the premises and of the mutual covenants herein contained and of the sum of One dollar (\$1.00) paid to each of the parties hereto by the other, the receipt whereof is hereby acknowledged, the parties hereto have agreed as follows:-

The said Land Company agrees to apply to the I. & N. Railroad Company to install a double ended turnout on the Fort Morgan Railroad on the side of it adjoining the property sold as aforesaid to said Fertilizer Company at a cost to the Bay Minette Land Company which is estimated at Twelve hundred dollars (\$1200.00) to Fifteen hundred dollars (\$1500.00) and not to exceed Twenty-five hundred dollars (\$2500.00) and if the Railroad Company does not install the



said switch within one hundred and twenty (120) days from the date hereof that then the said Fertilizer Company may at its election cancel the sale of said land and on reconveying to the said Land Company shall be entitled to the return of Nine Hundred dollars (\$900.00), the purchase price therefor.

And the said Land Company further agrees that it will give reasonable access to said land sold to the said Fertilizer Company over the land owned by it so as to connect the said land sold with the Brady Road and with the depot of the L & N Railroad Company; such access to consist of a convenient right-of-way, but the said Land Company is not obliged to locate a permanent right-of-way until it shall plat its adjoining holdings for permanent development.

It is understood and agreed that the said Fertilizer Company shall pay <sup>annually</sup> its proportionate part of the interest charges made by the L & N Railroad Company for maintaining the said switch. This payment may be made either direct to the L & N Railroad Company or to the said Land Company as the said Land Company may require and in case the said Fertilizer Company does not make the said payments, the said Land Company may make them for the said Fertilizer Company and be entitled to reimbursement therefor, which the said Fertilizer Company hereby agrees to pay. It is understood that the said Land Company may insert this provision in the deed of the land sold to said Fertilizer Company as a covenant running with the land.

This agreement shall run to the successors and assigns of the parties hereto.

In witness whereof the parties hereto have set their hands and seals respectively the day first above mentioned.

Bay Minette Land Company,

By *Hampton D. Loring*  
President.

Peoples Fertilizer & Grain Co., Inc.

By

*Wm. Stuart*  
*Out*

State Of Alabama, )  
Baldwin County. )

I, *Evomdeod*, a Notary Public in and for said County in said State, hereby certify that Hampton D. Ewing whose name as President of the Bay Minette Land Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 9th day of December, 1912.

*Evomdeod*  
Notary Public Baldwin Co.  
Alabama

State Of Alabama, )  
Baldwin County. )

I, *Evomdeod*, a Notary Public in and for said County in said State, hereby certify that Walter M. Stuart whose name as President of the Peoples Fertilizer & Grain Company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Peoples Fertilizer & Grain Company.

Given under my hand and seal this 9th day of December, 1912.

*Evomdeod*  
Notary Public Baldwin Co.  
Alabama

State Of Alabama,)
Baldwin County. )

KNOW ALL MEN BY THESE PRESENTS, That the
Bay Minette Land Company, a corporation organized and existing
under the laws of the State of Alabama, for an in consideration
of the sum of Nine hundred dollars (\$900.00) to it in hand paid
by Peoples Fertilizer Company a corporation organized
under the laws of the State of Alabama, the receipt whereof is
hereby acknowledged, does grant, bargain sell and convey unto
the said Peoples Fertilizer Company, the following described
lands situated in Baldwin County, Alabama, to wit:

All that certain lot piece or parcel of land situate,
lying and being in Section sixteen (16), Township two (2) South,
Range three (3) East, bounded and described as follows:

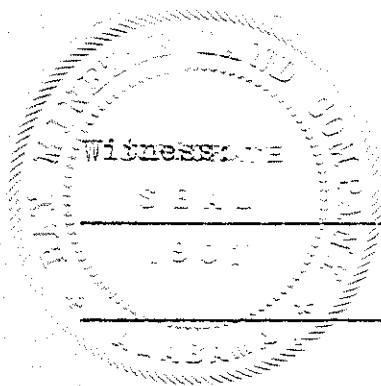
Beginning at a point on the westerly line of the right
of way of the Bay Minette & Port Morgan Railroad Company distant
southwely from the northerly line of said section sixteen measured
One thousand and ninety-two (1,092) feet along the said westerly
line of said right of way, thence Southerly along the westerly
line of said right of way one hundred and fifty (150) feet, thence
westerly at right angles to said westerly line of said right of way
one hundred and fifty (150) feet, thence northerly and parallel
with the first mentioned course one hundred and fifty (150) feet,
thence easterly one hundred and fifty (150) feet to the point or
place of beginning, containing fifty-one (51) one hundredths acres
be the same more or less.

TO HAVE AND TO HOLD to the said
its successors and assigns forever.

And the Bay Minette Land Company does covenant with the
said corporation that it is seized in fee simple of the above de-
scribed premises; that it has the right to sell and convey the

same; that the said premises are free from all encumbrances, and that it will forever WARRANT AND DEFEND the title to the said premises hereby granted to the said corporation, its successors and assigns, against the lawful claims of all persons.

IN WITNESS WHEREOF, the Bay Minette Land Company has caused these presents to be subscribed and its corporate seal to be affixed by Hampton D. Ewing its President this 16<sup>th</sup> day of December 1917.



Bay Minette Land Co. I.S.

BY Hampton D. Ewing  
President

State Of Alabama, )  
Baldwin County. )

I, *EwmLeod*, a Notary Public in  
and for said County in said State, hereby certify that Hampton  
D. Ewing whose name as President of the Bay Minette Land Company,  
a corporation, is signed to the foregoing conveyance, and who is  
known to me, acknowledged before me this day that, being informed  
of the contents of the conveyance, he, as such officer and with  
full authority, executed the same voluntarily for and as the act  
of said corporation.

Given under my hand and seal this 9th day of December, 1912.

*EwmLeod*  
*Notary Public Baldwin Co*  
*Alabama*

BAY MINETTE LAND COMPANY,  
Complainant,

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W. D. STAPLETON, HENRY D.  
MOORER and J. T. BRADLEY,  
Respondents.

Comes the respondent Henry D. Moorcr, and for answer to paragraph numbered 8, in the above styled cause and say: He admits that J. T. Bradley is a resident of Baldwin County, Alabama, and is over twenty-one years of age; he also admits that there was a \$5,000 note executed by the Bay Minette Land Company together with a \$3,000 note executed by this respondent to the Baldwin County Bank, being with certain conditions and understandings between this respondent and the Baldwin County Bank as herein below set forth:

That while the \$3,000 note executed to the Baldwin County Bank states that the \$5,000 note was placed as collateral to secure the \$3,000 note, in truth and in fact only the interest of W. D. Stapleton in the said \$5,000 note was so pledged for it was understood between the respondent Henry D. Moorer and the Baldwin County Bank through W. D. Stapleton acting as its President, that his (Stapleton) interest in the said \$5,000 note was to pay the \$3,000 note held by the Baldwin County Bank, should he be successful in the litigation with the Bay Minette Land Company and if not successful in the litigation, then pending he was to pay the \$3,000 note and take the property which he had contracted to buy from the Bay Minette Land Company and which was the principal subject matter of the litigation.

valuable consideration; that should the \$5,000 note be paid according to its terms and according to the understanding with the Baldwin County Bank by the parties liable for the payment of same, there would be sufficient money to pay the said Henry Woolf and the Baldwin County Bank or J. T. Bradley, whichever, is the proper holder of the \$3,000 note.

At the time this transaction was made relative to the \$3,000 note, W. D. Stapleton was President of the Baldwin County Bank and the transaction was had with him for and on behalf of the said Bank and that during the entire time the \$3,000 note was in existence J. T. Bradley was a director and officer of the said Baldwin County Bank.

That the Baldwin County Bank through its officers knew that the Stapleton interest in the \$5,000 note was the only interest pledged to secure payment of the \$3,000 note; that the respondent Henry D. Moorner was practically at all times in the town of Bay Minette and constantly in the Baldwin County Bank and would have gladly furnished information to the said J. T. Bradley should he requested same; that the Court proceedings in this cause was in the office of the Register of Bay Minette and could have been examined by the said J. T. Bradley should he so desired.

The Baldwin County Bank through its officers knew the \$5,000 note was being litigated and there were many equities involved in said note and irrespective of this the Baldwin County Bank assigned or purported to assign the said \$3,000 note with the \$5,000 collateral note to J. T. Bradley who was an officer of the said Bank during the existence of the \$3,000 note and this was done without notice or consent on the part of this respondent.

This respondent alleges that J. T. Bradley was an officer of the Baldwin County Bank at the time of this transaction and was negligent in protecting his interest and this respondent Henry D. Moorner or his assigns should not be made to suffer due to the negligence on the part of the said Bradley.

That prior to placing the \$5,000 note with the Baldwin County Bank, this respondent Henry D. Moorner had assigned his interest in the mortgage and his interest in the note secured thereby to Henry Woolf in good faith and for a

valuable consideration and that the said interest in the mortgage and note is owned and has been owned by Henry Woolf since October 1, 1930.

The respondent demands a trial by jury.

Henry D. Moor  
Respondent.

STATE OF ALABAMA,

BALDWIN COUNTY.

Before me T. W. Richerson, Baldwin County, Alabama, Clerk of Circuit Court, personally appeared Henry D. Moor, who being by me first, duly and legally sworn doth depose and say:

That the allegation contained in the foregoing answer are true and correct.

Henry D. Moor

Subscribed and sworn before me  
this 9th day of June, 1932.

T. W. Richerson  
Clerk of Circuit Court, Baldwin  
County, Alabama.



-----:  
Bay Minette Land Company, :  
Complainant, :  
: :  
: :  
-vs- :  
: :  
W. D. Stapleton, et al., :  
Respondents. :  
-----:

IN THE CIRCUIT COURT OF MOBILE  
COUNTY, ALABAMA.  
IN EQUITY.

This cause coming on to be heard and being submitted on the exceptions filed by the complainant to the report of the Special Master and for a final decree upon the pleadings, decrees pro confesso and the evidence as noted by the Register, it is ordered, adjudged and decreed by the Court:

1. That the complainant's exceptions numbered 1, 2, 3 and 4 to the Special Master's report be, and the same hereby are, sustained, and the complainant's exceptions numbered 5, 6, 7 and 8 to the Special Master's report be, and the same hereby are, overruled.

2. That the mortgage from the Bay Minette Land Company to W. D. Stapleton and Henry D. Moorner described in the original bill of complaint and introduced in evidence in the case was intended to secure, and operates to secure, a \$2,500.00 indebtedness, with interest, from the Bay Minette Land Company to Henry D. Moorner, and a \$2,500.00 indebtedness, with interest, from the Bay Minette Land Company to W. D. Stapleton, created contemporaneously with the execution of the mortgage; that the indebtedness to W. D. Stapleton secured by said mortgage bore interest at the rate of eight per cent per annum from the 8th day of December, 1928, to the 6th day of November, 1930; that the complainant, Bay Minette Land Company, is entitled to a set-off of \$3,000.00 as of November 6th, 1930, against the interest of the said W. D. Stapleton in the said indebtedness secured by the said mortgage; that the said set-off consists of the purchase price which the said W. D. Stapleton agreed to pay the complainant for a portion of the property embraced in the said mortgage, a proper deed for which said portion of said mortgaged property was tendered by the complainant to the said W. D. Stapleton and placed with the papers in this cause on the

6th day of November, 1930; that the said set-off be, and the same hereby is, allowed and decreed in the said sum of \$3,000.00 as of November 6th, 1930; that after allowing the said set-off there remains due and owing by the said W. D. Stapleton to the complainant, Bay Minette Land Company, the sum of \$130.09, with interest from November 6th, 1930, for which judgment is hereby rendered in favor of the Bay Minette Land Company against W. D. Stapleton, and for which let execution issue, and that the Register of this Court is hereby ordered and directed to enter upon the margin of the record of the said mortgage the fact that there has been paid on account of the principal of the indebtedness secured thereby the sum of \$2,500.00, and also all interest on said sum of \$2,500.00.

3. That the following payments were made by Bay Minette Land Company to the said Henry D. Moorner on account of its said indebtedness to him, namely: \$200.00 paid on July 27th, 1929, \$100.00 paid on May 30th, 1930, and \$68.09 paid on June 25th, 1930, and that there remains due upon the said mortgage indebtedness originally owing by the said Bay Minette Land Company to the said Henry D. Moorner, and including interest to the date of this decree, \$2,842.66, which stands secured by the said mortgage.

4. That, because of said purchase by the said Stapleton, the protection and enforcement of the rights and equities of all interested parties require that the mortgaged premises be divided into two separate parcels for the purposes of this decree, one, hereinafter designated as Parcel No. 1, to consist of all of the mortgaged premises except the portion thereof which was so conveyed to W. D. Stapleton by the complainant, and the other, hereinafter designated as Parcel No. 2, to consist of that portion of the mortgaged premises which was so conveyed to the said Stapleton; that the description of said Parcel No. 1 is as follows:

Lot Numbered 7 in Block Numbered 1; all of Block Numbered 2; all of Block Numbered 3 and all of Lot Numbered 6 in Block Numbered 1 except the following described property:

Commencing at the Northeast Corner of said Lot 6 run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet; thence Westwardly and parallel with the North line of the said Lot Six 155 feet; thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of the said Lot 6; thence Eastwardly along the North line of the said lot 6 to the point of beginning; all in Ft. Morgan Addition to Bay Minette, Alabama, a subdivision of a part of the East half of the Northeast Quarter of Section Sixteen (16) Township Two (2) South Range Three (3) East in Baldwin County, Alabama, according to the official plat thereof of record in Map Book Number 1 at page 127 in the Probate Records of Baldwin County, Alabama.

that the description of Parcel No. 2 is as follows:

....All that portion of the East half of the Northeast Quarter ( $E\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section Sixteen (16), Township Two (2) South, Range Three (3) East, being all of Lots One (1), Two (2), Three (3), Four (4), Five (5), Eight (8), Nine (9), Ten (10) and Eleven (11) and that part of Lot Six (6) described as follows: Commencing at the Northeast corner of the said lot Six (6), run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet, thence Westwardly and parallel with the North line of said lot Six (6) 155 feet, thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of said lot Six (6), thence Eastwardly along the North line of said Lot Six (6) to the point of beginning, all in Block One (1) as shown on that map entitled Ft. Morgan Addition to Bay Minette, made by D. F. Albin, Engineer, dated June 12th, 1929 and filed for record June 14th, 1929, in the office of the Probate Judge of Baldwin County, Alabama.

Also all and the entire right, title and interest conveyed by Bay Minette Land Company to W. D. Stapleton in and to the oil track spur and that portion of the side track along the B. M. & Ft. M. Branch of the L & N Railroad Company lying opposite the Ft. Morgan Addition to the Town of Bay Minette, lands of Peoples Fertilizer Company and the land adjoining Peoples Fertilizer Company on the North, insofar as such tracks are North of the South line of the real estate hereinabove described, together with all rights and monies to become due under rental agreement with the Pan American Petroleum Corporation after the 6th day of November, 1930.

5. That under date of November 2nd, 1931, the said Henry D. Moorer executed to Baldwin County Bank his promissory note for \$3,000.00, payable on January 2nd, 1932, with the \$5,000.00 note of the said Bay Minette Land Company, dated December 8th, 1928, and payable to W. D. Stapleton and Henry D. Moorer, and endorsed by both of said payees, attached as collateral security to the said \$3,000.00 note of the said Henry D. Moorer; that before its maturity and for a valuable consideration the said Baldwin County Bank sold and endorsed to the respondent and cross-complainant, J. T. Bradley, the aforesaid \$3,000.00 note of the said Henry D. Moorer; that the said note is still owned

and held by the said J. T. Bradley; that nothing has been paid on account thereof; that the full amount thereof, namely, \$3,000.00, together with interest thereon at the rate of eight per cent per annum from January 2nd, 1932, making a total of \$3,137.35, is owing by the said Moorer to the said Bradley and is secured by the hypothecation of all interest of the said Moorer in or under the said \$5,000.00 note of the said Bay Minette Land Company; and that by virtue of the said pledge and hypothecation to him of the said \$5,000.00 note of the said Bay Minette Land Company the said J. T. Bradley is entitled to and shall be paid all sums which may be paid into this Court by the said Bay Minette Land Company in payment or redemption of the said \$5,000.00 mortgage, or which, up to \$3,137.35 with interest from this date, may be realized from a foreclosure of the said mortgage as to the said Parcel No. 1 as hereinafter ordered in the event that the said Bay Minette Land Company does not so redeem.

6. It is further hereby ordered, adjudged and decreed that the said Bay Minette Land Company is hereby allowed sixty days from this date within which to pay to the said J. T. Bradley, or to pay to the Register of this Court for his account, as in full settlement of the balance of the indebtedness of complainant secured by said mortgage and as in redemption from the said mortgage of the lands hereinabove described as Parcel No. 1, the aforesaid sum of \$2,842.66, together with interest thereon at eight per cent per annum from this date to the date of payment, and upon the payment of said sum by the Bay Minette Land Company to the said J. T. Bradley, or to the Register of this Court for his account, the Register of this Court is hereby ordered to enter upon the margin of the record of the said mortgage as the same appears upon the mortgage record of Baldwin County, Alabama, and also upon the records of this Court, full satisfaction of the said mortgage as to the above described Parcel No. 1.

7. It is further ordered, adjudged and decreed by the Court that in the event that the said Bay Minette Land Company fail to fully pay and satisfy the said balance of \$2,842.66,

5.

with interest from this date at eight per cent per annum, within the sixty days herein allowed therefor, the Register of this Court, after giving notice as required by law of the time, place and terms of said sale, shall sell at public auction to the highest bidder for cash, in front of the Court House door of Baldwin County, Alabama, as a separate parcel, all of the lands embraced in Parcel No. 1 as hereinabove described, and, as another separate parcel, all of the lands embraced in Parcel No. 2 as hereinabove described; that with dispatch the Register shall report to this Court his acts and doings in the premises for such further orders and decrees as may be appropriate; that upon the confirmation of said sales the Register shall pay over the proceeds of the sale of Parcel No. 1 to the said J. T. Bradley up to, but not exceeding, the aforesaid sum of \$2,842.66, with interest thereon at the rate of eight per cent per annum from this date; that if any of said proceeds then remain, he shall pay the same over to the complainant, Bay Minette Land Company; that from the proceeds of the sale of Parcel No. 2 the Register first shall pay the entire costs of this cause, which costs are hereby taxed against the respondent Stapleton and made a first lien or charge upon said Parcel 2, and next shall pay to the complainant the aforesaid sum of \$130.09 with interest thereon from November 6th, 1930, which is hereby decreed to be secured by a vendor's lien on said Parcel No. 2, subject only to the payment of the costs of this cause as hereby decreed; that the Register then shall pay over to the said J. T. Bradley the remainder, if any, of the proceeds of the sale of Parcel No. 2 up to, but not exceeding, such amount as being added to the amount received by the said Bradley from the proceeds of the sale of Parcel No. 1 will make a total of the aforesaid sum of \$3,137.35, with interest from this date, owing to him by the said Henry D. Moorner as is above decreed; and that if any of said proceeds of the sale of Parcel No. 2 then remain the same shall be paid to the said W. D. Stapleton.

8. That in the event that the complainant redeem Parcel

No. 1 pursuant to the provisions in that behalf herein appearing, then at the expiration of sixty days from this date the Register shall proceed to advertise and sell Parcel No. 2 in compliance with the foregoing provisions for a foreclosure of that parcel, unless prior thereto the respondent W. D. Stapleton shall have paid all of the costs of this cause as taxed by the Register, shall have paid to the Register for the complainant the aforesaid sum of \$130.09 with interest thereon from November 6th, 1930, and shall have paid to the Register for the said J. T. Bradley the excess, with interest thereon, of the amount, namely, \$3,137.35, to which the said Bradley is entitled as the holder of said note of the said Moorer over the amount paid by the complainant in redemption of Parcel No. 1; that the making of all of said payments by the defendant Stapleton within the time above limited shall operate as a redemption by him of said Parcel No. 2; and that in the absence of such redemption the said Parcel No. 2 shall be sold by the Register in the method and for the purposes herein decreed.

9. That the aforesaid deed of the Complainant to the Defendant W. D. Stapleton, tendered to him on November 6th, 1930, as aforesaid and refused by him, which tender has been kept good by placing the said deed in the files in this cause for the said Stapleton, where it still remains, is hereby decreed to vest in him, but subject to all liens herein decreed, all of the complainant's title, both legal and equitable, in and to the premises described in the said deed; that the legal title to said premises, subject to all liens thereon herein decreed, is hereby vested in the said W. D. Stapleton; that the Register of this Court be, and he is hereby, ordered to cause said deed to be recorded in the office of the Probate Judge of Baldwin County, Alabama, and to tax the expense thereof as a part of the costs of this cause; and that thereafter the Register do deliver the said deed to the said W. D. Stapleton.

10. That although the costs of this cause herein decreed against the respondent W. D. Stapleton are secured by the lien therefor hereinabove decreed, yet execution therefor may issue.

11. That all further and other matters and questions be and are hereby reserved.

Dated this 29th day of July, 1932.

F. W. Hare

Judge.

BAY MINETTE LAND COMPANY,

Complainant,

VS.

W. D. STAPLETON, et als,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER \_\_\_\_.

DECREE CONFIRMING REPORT.

THIS CAUSE coming on to be further heard, upon the report of the Register, and said report having been read in open Court at a former day, and having lain over one entire day for exceptions and no exceptions thereto having been filed, it is Ordered, Adjudged and Decreed, that said report be in all things ratified and confirmed, and the said R. S. Duck, as Register of this Court, is hereby ordered and directed to execute to the said J. T. Bradley a deed, properly drawn and executed conveying to him all the interest in said property heretofore held by any and all parties to this cause.

And it appearing from the report of the Register that the sum of \$2593.58 with interest thereon from November 18, 1935, is still due and unpaid, it is Ordered and Decreed that jurisdiction of this cause be retained by this Court for such orders and decrees as may be proper concerning said balance or sum of money so certified by the Register of this Court to be due respondent and cross-complainant, J. T. Bradley, from Complainant, Bay Minette Land Company.

Witness my hand this 16<sup>th</sup> day of August, 1938.

*F. W. J. Lane*

Judge.

Ext 9  
HAMPTON D. EWING  
COUNSELOR AT LAW

TELEPHONE  
CORTLANDT 2368  
WITCHCOCK 0357

CABLE ADDRESS, "EWINGEWING NEWYORK"

160 BROADWAY, NEW YORK

February 5, 1930

Henry D. Moorer, Esq.,  
Bay Minette, Alabama.

Dear Sir:

I have talked with my brother this afternoon, being my first opportunity, and he is going to take up the \$1000. item. I will write you tomorrow just when. It may not be tomorrow.

Yours very truly,

Hampton D. Ewing.  
H.

Dict. but not read.

Respect  
Eg. DH



## DECREE CONFIRMING REPORT.

BAY MINETTE LAND COMPANY,

Complainant,

VS.

W. D. STAPLETON, et als,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER \_\_\_\_.

Filed this 16 day August 1937  
P. J. D. Smith  
Clerk-Register

Ex 7  
Resident  
F  
STATE OF ALABAMA.

BALDWIN COUNTY.

THIS AGREEMENT, in duplicate, this June 19, 1929, between BAY MINETTE LAND COMPANY, as "Seller", and W. D. STAPLETON, as "Purchaser",

WITNESSETH: That in consideration of the sum of One Dollar to it in hand paid by purchaser, receipt whereof is hereby acknowledged, and of the mutual covenants herein contained, seller agrees to convey to purchaser, by full warranty deed, the real property hereinafter described and to transfer and assign to the purchaser the other rights herein described at and for the total purchase price of THREE THOUSAND DOLLARS (\$3,000.00), same to be paid in cash upon delivery of deed conveying fee simple title to the said real estate, free of all encumbrances, and the delivery of proper transfer and assignment for the other rights, the property covered hereby and to be conveyed and transferred hereunder being in Baldwin County, Alabama, described as follows, viz.:

All that portion of the East half of the Northeast quarter of Section sixteen, Township two South, Range three East, being all of lots one, two, three, four, five, eight, nine, ten and eleven and that part of lot six described as follows: Commencing at the Northeast corner of the said lot six, run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet, thence Westwardly and parallel with the North line of said lot six 155 feet, thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of said lot six, thence Eastwardly along the North line of said lot six to the point of beginning, all in Block one, as shown on that map entitled Ft. Morgan Addition to Bay Minette, made by D. F. Albin, Engineer, dated June 12, 1929, and filed for record June 14, 1929, in the office of the Probate Judge of Baldwin County, Alabama.

Also all and the entire right, title and interest of the seller in and to the oil track spur and that portion of the side track along the B. M. & Ft. M. Branch of the L. & N. Railroad Company lying opposite the Ft. Morgan Addition to the Town of Bay Minette, lands of Peoples Fertilizer Company and the land adjoining Peoples Fertilizer Company on the North, insofar as such tracks are North of the South line of the real estate hereinabove described, together with all rights and monies to become due under rental agreement with the Pan American Petroleum Corporation after the date hereof. Upon transfer of such track rights hereunder, purchaser may make a new trackage agreement with the L. & N. Railroad Company in the purchaser's name with respect to the portion of the tracks covered hereby, purchaser being entitled to all benefits seller may have under original contracts insofar as same relate to portions of track covered hereby, including refund of any monies.

All conveyances and transfers hereunder to be made subject to easement to Pan American Petroleum Corporation under the contract above referred to.

The purchaser agrees to purchase the above properties under the terms and conditions hereof, same to be consummated upon presentation of proper conveyances and transfers by seller which shall be done within thirty (30) days from this date.

WITNESS the hands and seals of the parties hereto in

duplicate on the day and year first above written.

WITNESSES

BAY MINETTE LAND COMPANY,

BY

*Hampton S. Curry*

Its President.

SEAL

*M. R. Stapleton*

SEAL

B MINETTE, ALA.

1927 No.

# BALDWIN COUNTY BANK

61-258

Pay to the  
order of

Harry D. Moore

\$

200

Dollars

Two hundred

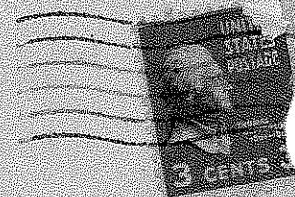
Harry D. Moore

6/10/27

COUNTY CLERKS OFFICE

Elizabeth City County  
HAMPTON, VIRGINIA

R. E. WILSON, CLERK



Telfair J. Mashburn, Jr.  
Attorney At Law  
Bay Minette, Alabama

shall have the immediate right to re-enter and take possession of the said property, and in the event of the cancellation of the contract as herein provided, any saw mill machinery and equipment and trade or business machinery, equipment and fixtures which have been placed on the said property by the said purchaser shall remain the property of the purchaser, and he shall have a reasonable length of time after notice of such cancellation to remove the same, not to exceed thirty days.

The said seller has built, or caused to be built, a railroad switch on the right of way of the Bay Minette and Ft. Morgan Railroad Company, adjacent to the land above described and adjacent to other lands now or formerly owned by the said seller, said switch connecting with the Louisville and Nashville Railroad and with the Bay Minette and Ft. Morgan Railroad, and the said seller pays the Louisville and Nashville Railroad Company, semi-annually, the cost of maintenance of said switch and interest on the cost of steel in the said switch. It is understood and agreed that one of the objects of the purchaser in purchasing said property is to obtain adequate shipping facilities for his operations. In consideration of his purchase of the said property aforesaid, for the purposes aforesaid, the said seller, insofar as it has the right to so do, does hereby give, sell and grant to the said purchaser the exclusive right to load and unload freight on and from that part of the said switch adjacent to the lands covered by this contract, and the said purchaser contracts and agrees to pay to the said Louisville and Nashville Railroad Company, semi-annually, when and as the said Railroad Company shall demand payment therefor, seven-twelfths of the cost of the maintenance and interest charge on the said switch, provided, however, he is not required to pay for any maintenance and interest charge on any spur from the said switch or for any maintenance and interest charge on any extension of the said switch.

This contract shall inure to the benefit of and be binding upon the successors, personal representatives and assigns

of the parties hereto.

IN WITNESS WHEREOF the said BAY MINNETTE LAND COMPANY has caused these presents to be executed by Hampton D. Ewing, its President, and its corporate seal to be hereto affixed, and the said J. W. McMillan has hereto set his hand and seal this the day and year first above written.

BAY MINNETTE LAND COMPANY,

BY

Its President.

(SEAL)

STATE OF ALABAMA)  
BALDWIN COUNTY )

I, \_\_\_\_\_ a Notary Public in and for said County, in said State, hereby certify that Hampton D. Ewing, whose name as President of the Bay Minnette Land Company, a corporation is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance he, as such officer and with full authority, executed the same voluntarily on the day the same bears date, for and as the act of said corporation.

Given under my hand and seal this the \_\_\_\_\_ day of June, 1929.

Notary Public,  
Baldwin County, Alabama.

STATE OF ALABAMA)  
BALDWIN COUNTY )

I, \_\_\_\_\_ a Notary Public in and for said State and County, do hereby certify that J. W. McMillan, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the \_\_\_\_\_ day of June, 1929.

Notary Public,  
Baldwin County, Alabama.

STATE OF ALABAMA.

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That in consideration of the purchase this day by W. D. STAPLETON from the BAY MINETTE LAND COMPANY of all those certain twenty-six (26) promissory notes, consisting of twenty-three (23) notes of One Hundred Fifty Dollars (\$150.00) each, payable one each month beginning July 12, 1929, ending May 12, 1931, and three (3) notes in sum of Four Thousand Dollars (\$4,000.00), Four Thousand Dollars (\$4,000.00) and Four Thousand Four Hundred Dollars (\$4,400.00) respectively and due as to the last three (3) June 12, 1931, all of date June 12, 1929, signed by J. W. McMillan, payable to order of Bay Minette Land Company at Baldwin County Bank, Bay Minette, Alabama, and all being the same notes as described in and evidencing balance of purchase price under that certain contract hereinafter by this instrument transferred and assigned, and of the sum of One Dollar (\$1.00) to it in hand paid by W. D. Stapleton, receipt whereof is hereby acknowledged, the Bay Minette Land Company, a corporation, hereby TRANSFERS, SETS OVER AND ASSIGNS unto W. D. Stapleton that certain contract or "Memorandum of Agreement" dated June 12, 1929, by and between Bay Minette Land Company, a corporation, as "seller", and J. W. McMillan, as "purchaser", and covering the following described lands in Baldwin County, Alabama, in Township Two (2) South, Range Three (3) East, to-wit:

All of lot seven in Block one, and all of lot six in Block one, as shown on that map entitled Ft. Morgan Addition to Bay Minette made by D. F. Albin, Engineer, dated June 12, 1929, and filed for record June 14, 1929, except so much of lot six described as follows: Commencing at the Northeast corner of the said lot six, run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet, thence Westwardly and parallel with the North line of said lot six 155 feet, thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of said lot six, thence Eastwardly along the North line of said lot six to the point of beginning;

And in addition thereto certain siding or trackage rights and interest therein particularly described.



Together with all rights, benefits, powers and privileges unto the same belonging or in any wise appertaining.

TO HAVE AND TO HOLD unto the said W. D. Stapleton, his heirs and assigns. And the said Bay Minette Land Company, for itself and its successors, hereby covenants and warrants with and unto the said W. D. Stapleton, his heirs and assigns, that it has an indefeasible estate in fee simple in and to all property and rights covered by said contract, together with a perfect title to said contract and the notes and debt covered thereby, with full right to enter into said contract and to execute this instrument; that the property and rights covered by said contract are free from all liens and encumbrances, and that the Bay Minette Land Company will, and its successors shall, forever warrant and defend unto the said W. D. Stapleton, his heirs and assigns, the rights herein transferred against the lawful claims of all persons whomsoever.

In further consideration of the above purchase of said notes by W. D. Stapleton and to the end that this instrument give to W. D. Stapleton full and complete rights in, to and under the contract hereby assigned the Bay Minette Land Company has executed and delivers to W. D. Stapleton, contemporaneously with the execution of this instrument, its full Warranty Deed conveying to J. W. McMillan the lands covered by said contract and does hereby give to and vest in the said W. D. Stapleton, his heirs and assigns, full, complete and irrevocable authority, such authority being intended and shall be construed as authority or agency coupled with an interest, to hold said deed for delivery to the said J. W. McMillan, his heirs or assigns, with right and authority to deliver same when he or they shall be entitled to said deed under the terms of said contract of June 12, 1929.

The Bay Minette Land Company has endorsed and stands liable as endorser on all of said notes above described and the rights herein given W. D. Stapleton are not intended nor shall

they be construed as in any wise limiting or restricting the rights of W. D. Stapleton, or the liabilities of the Bay Minette Land Company under such endorsements; but such endorser's liability shall in all respects continue as to the notes already executed by the said J. W. McMillan and so purchased by W. D. Stapleton, and by this instrument the Bay Minette Land Company further binds itself, and its successors, as endorser on any and all other notes which the said J. W. McMillan, his heirs or assigns, may make under the terms of said contract, and will, upon request, endorse same, but such liability shall not be conditioned upon actual endorsement. As to all such notes under said contract and the debt evidenced thereby, whether the notes be now made or hereafter made, the Bay Minette Land Company, as such endorser, agrees to pay all costs of collecting or securing or attempting to collect or secure, including reasonable attorney's fees, whether the same be collected or secured by suit or otherwise, and does hereby waive demand, presentment, protest, notice of protest, suit and all other requirements necessary to hold it, and it agrees that time of payment as to said notes, or any of them, may be extended without notice to it of such extension.

The Bay Minette Land Company, in further consideration of the above, undertakes and agrees to make, execute and deliver any other, further or different instruments necessary, proper or convenient to carry out the terms of said contract of June 12, 1929, and this instrument.

This instrument shall be binding upon and enure to the benefit of the successors, heirs and assigns of the parties hereto.

IN WITNESS WHEREOF, the BAY MINETTE LAND COMPANY, a corporation, causes these presents to be executed by Hampton D. Ewing, as its President, he being thereunto duly authorized, and its corporate seal to be hereto affixed, this 17<sup>th</sup> day of June, 1929.

BAY MINETTE LAND COMPANY,  
a Corporation,

By Hampton D. Ewing  
As its President.

STATE OF ALABAMA.

BALDWIN COUNTY.

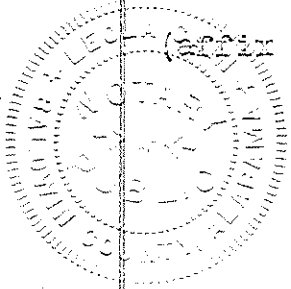
I, Leslo Cain, a Notary Public in and for said County in said State, hereby certify that Hampton D. Ewing, whose name as President of the Bay Minette Land Company, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation, on the day the same bears date.

Given under my hand and Notarial seal this the 12th day of July, 1929.

Leslo Cain

Notary Public, Baldwin County,  
Alabama.

(affix seal)



STATE OF ALABAMA.

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That WHEREAS, the BAY MINETTE LAND COMPANY has this day sold to W. D. STAPLETON all of those certain twenty-six (26) promissory notes, consisting of twenty-three (23) notes of One Hundred Fifty Dollars (\$150.00) each, payable one each month beginning July 12, 1929, ending May 12, 1931, and three (3) notes in sum of Four Thousand Dollars (\$4,000.00), Four Thousand Dollars (\$4,000.00) and Four Thousand Four Hundred Dollars (\$4,400.00) respectively and due as to the last three (3) June 12, 1931, all of date June 12, 1929, signed by J. W. McMillan, payable to order of Bay Minette Land Company at Baldwin County Bank, Bay Minette, Alabama, and all being the same notes as described in and evidencing balance of purchase price under that certain "Memorandum of Agreement" dated June 12, 1929, by and between Bay Minette Land Company as "seller" and J. W. McMillan as "purchaser", and covering portions of "Ft. Morgan Addition" to Bay Minette, Alabama, as per plat filed for record in the Office of the Judge of Probate of Baldwin County, Alabama, on June 14, 1929, and the Bay Minette Land Company has by instrument executed contemporaneously herewith transferred to W. D. Stapleton said contract and stands liable as endorser on all of said notes so sold, and on any and all other notes which may be by the said J. W. McMillan executed under said contract and in lieu of the above described notes;

AND WHEREAS, the Bay Minette Land Company desires and as a part of the consideration for the purchase of said notes by W. D. Stapleton agreed to secure its endorsements now made and to be made by executing to and in favor of the said W. D. Stapleton a mortgage on the hereinafter described real estate;

NOW THEREFORE, in consideration of the premises, in order to carry out said agreement under which said notes are purchased by W. D. Stapleton, and of the sum of One Dollar (\$1.00) to it cash in hand paid by W. D. Stapleton, receipt whereof is hereby acknowledged, the Bay Minette Land Company, a corporation organized and existing under the laws of the State of Alabama, as "mortgagor", does hereby GRANT, BARGAIN, SELL AND CONVEY unto the said W. D. Stapleton, as "mortgagee", the following described real property in Baldwin County, Alabama, viz.:

All that property particularly described in and covered by the description hereto attached, marked "Exhibit A", identified by the signature of the mortgagor and made a part hereof;

Together with all and singular the rights, benefits, improvements, privileges, tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

TO HAVE AND TO HOLD unto the said mortgagee, his heirs and assigns, FOREVER. The mortgagor, for itself and its successors hereby covenants and warrants with and unto mortgagee, his heirs and assigns, that it is seized of an indefeasible estate in fee simple in and to all of the property covered hereby; that same are free from any lien or encumbrance, save and except that certain mortgage from the Bay Minette Land Company to W.D. Stapleton and Henry D. Moorer of date the 8th day of December, 1928, and of record in the Office of the Judge of Probate of Baldwin County, Alabama, in Mortgage Book 44, pages 445; that it has a good right to convey said properties as herein conveyed; that it will guarantee the peaceable possession thereof and that it will and its successors shall forever warrant and defend the title to the same unto the said mortgagee, his heirs and assigns, against the lawful claims of all persons whomsoever. Subject, however, to rights of J. W. McMillan as to portions of property covered by his contract of June 12, 1929, as hereinabove referred to.

And the mortgagor for itself and its successors further covenants and agrees to and with mortgagee, his heirs and assigns, that so long as this instrument shall remain in force to regularly assess and pay all taxes or other legal charges against said

property and before the same become delinquent, and in the event it fails so to do, mortgagee may at his option do so and all expenses incurred or paid therefor and in connection therewith shall be added to and become a part of the debt secured hereunder and shall be due and payable, together with interest at eight per cent. (8%) from date of payment by mortgagee, on the due date of the next maturing note hereinabove described. No payment by mortgagee shall constitute a waiver of the breach occasioned by same until after such repayment is made to and accepted by mortgagee.

THIS CONVEYANCE AND ALL OF THE COVENANTS HEREIN CONTAINED ARE UPON THE EXPRESS CONDITION: That if the mortgagor shall well and truly perform and carry out all of his agreements and covenants herein contained and shall fully meet, pay off and promptly discharge any and all liabilities accruing against it as endorser on said notes, then this instrument to be void. But in event mortgagor shall fail to fully keep and perform any of the covenants and agreements on his part contained, or shall fail to promptly pay off and discharge any and all obligations accruing or moneys due by it under, by virtue of or in connection with its endorsements aforesaid, either in whole or in part, then all amounts due under and secured hereby and all of said notes so endorsed shall automatically and without notice become at once due and payable, and the mortgagee, his heirs, assigns, agents or attorneys, may, at his or their option, proceed to the foreclosure of this instrument as in the case of past due mortgages, and shall have and is hereby given full power and authority to sell all of the properties covered hereby at public auction for cash in front of the Court House at Bay Minette, Baldwin County, Alabama, after first giving notice of the time, place, terms and purpose of such sale by advertisement once a week for two successive weeks in some newspaper then published in Baldwin County, Alabama; at any such sale or sales held hereunder, mortgagee, his heirs, assigns, agents or attorneys, may bid for and purchase said property as though strangers to this instrument; all conveyances under any such sale, whether properties purchased by mortgagee, his heirs, assigns, agents or attorneys, or by other parties, shall be executed by the mortgagee, his heirs, assigns, or his or their agents or attorneys, for, in the name and as the attorney in fact for mortgagor and the title so made mortgagor will warrant and defend as the title is herein warranted.

From the proceeds of any such sale so held hereunder there shall first be paid all costs and expenses in connection therewith, including all reasonable attorneys' fees for foreclosure and sale, next there shall be paid off and discharged all amounts due mortgagee under said endorsements by mortgagor and the terms of this instrument, and then the balance, if any, shall be paid over to mortgagor. In the event any suit or legal proceeding, in law or equity, be instituted by or against the mortgagor or the mortgagee in connection with this instrument, the debt secured, said notes or the properties covered hereby, then all costs and expenses thereof incurred or paid by mortgagee in connection therewith, including all reasonable attorneys' fees, shall be added to and become a part of the debt secured hereunder and shall be due and payable on the due date of the next maturing note above described or at foreclosure in the event mortgagor be in default.

IN WITNESS WHEREOF, the Bay Minette Land Company, a corporation, causes these presents to be executed by Hampton D. Ewing, as its President, he being thereunto duly authorized, and its corporate seal to be hereto affixed as mortgagor, on this the 7<sup>th</sup> day of June, 1929.

BAY MINETTE LAND COMPANY,  
a Corporation,

By Hampton D. Ewing SEAL  
As its President.

(page two)

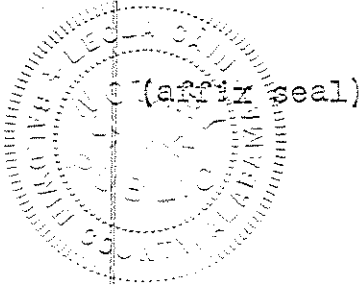
(affix corporate seal)

STATE OF ALABAMA.

BALDWIN COUNTY.

I, Lever Cain, a Notary Public in and for said County in said State, hereby certify that Hampton D. Ewing, whose name as President of the Bay Minette Land Company, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation, on the day the same bears date.

Given under my hand and Notarial seal this the 12th day of July 1929.



Lever Cain  
Notary Public, Baldwin County,  
Alabama.

EXHIBIT "A"

All that certain tract of land described as Ft Morgan Addition to Bay Minette, Alabama shown on a certain map made by D.F. Albin, Surveyor, bearing date the 12th day of June, 1929 and filed for record in the office of the Probate Judge of Baldwin County on the 15th day of June, 1929 and recorded in Map Book Number One, at page 127, excepting thereout the property shown on said map as Lots Number One (1), Two (2), Three (3), Four (4), Five (5), Eight (8), Nine (9), Ten (10), Eleven (11) and that portion of Lot Number Six (6) as described as follows: Commencing at the Northeast corner of the said Lot Six (6), run thence South along the West line of the Right of Way of the Bay Minette & Ft Morgan Railroad Company 25 feet, thence Westwardly and parallel with the North line of said Lot Six (6), 155 feet, thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft Morgan Railroad Company to the North line of said Lot Six (6), thence Eastwardly along the North line of said Lot Six (6) to the point of beginning, and excepting also the lots shown on said map bearing severally the names, Peoples Fertilizer Company, Pan American Oil Company and W.O. Norton. The lands hereby conveyed being in the Southeast Quarter of the Northeast Quarter ( $SE\frac{1}{4}$  of  $NE\frac{1}{4}$ ) of Section Sixteen (16), Township Two (2) South, Range Three (3) East.

Also in the Hand Land Company Addition to Bay Minette, Alabama, as follows:

Blocks Eleven (11), Twelve (12), Thirteen (13), Sixteen (16), Seventeen (17), Eighteen (18), Thirty-nine (39), Forty (40) and Forty-one (41).

-----  
BAY MINETTE LAND COMPANY, a corporation,  
By Humphreys & Lewis (SEAL)  
As its President.

STATE OF ALABAMA,

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS, That the BAY MINETTE LAND  
COMPANY, hereinafter called mortgagor, in consideration of the sum of

Five Thousand & 00/100 . . . . . Dollars,

to it in hand paid by W. D. STAPLETON and HENRY D. MOORER, hereinafter called  
mortgagees, the receipt whereof is hereby acknowledged, does by these presents  
grant, bargain, sell and convey unto the said mortgagees, their heirs and  
assigns, forever, the following described property, to-wit:-

All that certain tract of land as described  
in a certain plat by D. F. Albin and known as the  
Fort Morgan Addition to the Town of Bay  
Minette, said plat is ~~xxxxx~~ recorded in the  
office of the Judge of Probate of Baldwin  
County, Map Book No. One, page 120,  
said lands being in Baldwin County, Alabama,  
in the Northeast quarter of Section Sixteen  
(16), Township Two (2) South, Range Three  
(3) East.

TOGETHER with all and singular the tenements, rights, privileges and appurtenances  
to said described premises in anywise belonging. TO HAVE AND TO HOLD the same  
forever. PROVIDED ALWAYS, and these presents are upon the express condition that  
if the said mortgagor shall well and truly pay to the mortgagees,



the sum of Five Thousand & 00/100 (\$5,000.00) Dollars, as evidenced

by one note of even date hereof, due and payable six months from

date hereof, with interest from date at the rate of 8%

and shall also discharge all the duties imposed upon said mortgagee, by this mortgage, then these presents shall become void, otherwise to remain in full force.

In event of default in the payment at maturity of said mortgage debt, or any amount secured hereby, mortgagees are hereby authorized to sell said property, at auction, for cash after give notice by advertisement, once a week for three consecutive weeks in any newspaper then published in Baldwin County, Alabama, and to make proper conveyance to purchaser, and the proceeds of sale to apply first, to the payment of the costs of said sale, including a reasonable attorney's fee; second, to the payment of said mortgage debt and any sums herein provided for, the balance, if any, to be paid over to the said mortgagor. Mortgagees may purchase said property at such sale and, in that event the auctioneer conducting the sale is authorized in the name of the mortgagor, and as its attorney in fact, to make deed to mortgagees. Mortgagor agrees to pay such reasonable attorneys fees as may be incurred by the mortgagees, in the collection of said mortgage debt, or otherwise by reason of any default on the part mortgagor covenants that it is seized in fee simple of the said property, that it is free from all encumbrances, that it will warrant and defend the same to mortgagees and to the purchaser thereof, against the lawful claims of all persons.

IN WITNESS WHEREOF, the said mortgagor has hereunto set its hand and seal this 8th. day of December, 1928.



BAY MINETTE LAND COMPANY

by

Frank S. Curry  
as its President.

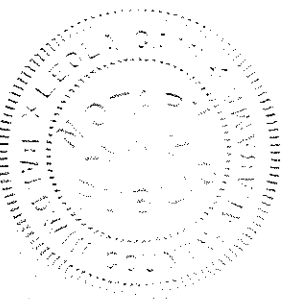
STATE OF ALABAMA,

BALDWIN COUNTY.

I, Leola Cain, a Notary Public in and for said County in said State, hereby certify that Hampton W. Ewing, whose name as President of the Bay Minette Land Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this 8th day of December, 1928.

Leola Cain  
Notary Public, Baldwin County, Alabama.



WARRANTY DEED

State of Alabama, }  
Baldwin County. }

**Know All Men by these Presents,** *That the Bay Minette*

~~Land Company, a corporation organized and existing under the laws of the State of Alabama, for and~~

in consideration of the sum of THREE THOUSAND ----- Dollars,

( \$3000.00 ) to it in hand paid the receipt whereof is hereby acknowledged, does grant,

bargain, sell and convey unto W.D. STAPLETON of Bay Minette, Alabama

hereinafter called the grantee, the following described lands situated in Baldwin County, Alabama,

to wit: All that portion of the East half of the Northeast Quarter (E $\frac{1}{2}$  of NE $\frac{1}{4}$ ) of Section Sixteen (16), Township Two (2) South, Range Three (3) East, being all of Lots One (1), Two (2), Three (3), Four (4), Five (5), Eight (8), Nine (9), Ten (10) and Eleven (11) and that part of Lot Six (6) described as follows: Commencing at the Northeast corner of the said lot Six (6), run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet, thence Westwardly and parallel with the North line of said lot Six (6) 155 feet, thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of said lot Six (6), thence Eastwardly along the North line of said Lot Six (6) to the point of beginning, all in Block One (1) as shown on that map entitled Ft. Morgan Addition to Bay Minette, made by D.F. Albin, Engineer, dated June 12th, 1929 and filed for record June 14th, 1929 in the office of the Probate Judge of Baldwin County, Alabama.

Also all and the entire right, title and interest of the seller in and to the oil track spur and that portion of the side track along the B.M. & Ft. M. Branch of the L & N Railroad Company lying opposite the Ft. Morgan Addition to the Town of Bay Minette, lands of Peoples Fertilizer Company and the land adjoining Peoples Fertilizer Company on the North, insofar as such tracks are North of the South line of the real estate hereinabove described, together with all rights and monies to become due under rental agreement with the Pan American Petroleum Corporation after the date hereof.

All conveyances and transfers hereunder to be made subject to easement to Pan American Corporation under the contract above referred to.

-----

To have and to hold to the said Grantee his heirs and assigns forever.

And the Bay Minette Land Company does covenant with the said Grantee, that it is seized in fee simple of the above described premises; that it has the right to sell and convey the same; that the said premises are free from all encumbrances, and that it will forever warrant and defend the title to the premises hereby granted to the said Grantee his heirs

and assigns, against the lawful claims of all persons.

In Witness Whereof, the Bay Minette Land Company has caused these presents to be subscribed and its corporate seal to be affixed by Hampton D. Ewing, its President, this

6th day of NOVEMBER A. D. 1930.

Bay Minette Land Company,

By

*Hampton D. Ewing*

President.



State of ~~Alabama~~ *New York*  
BALDWIN  
County of ~~New York~~

I,

*Leven Cain*

a Notary Public in and for said County in said State, hereby certify that Hampton D. Ewing whose name as President of the Bay Minette Land Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this

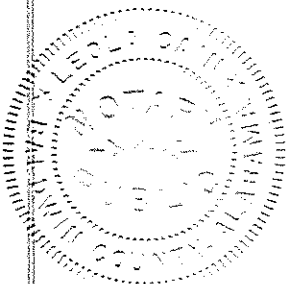
6th

day of

November

1930.

*Leven Cain*



HAMPTON D. EWING and  
MARIA D. EWING, his wife,

-to-

LAY MINETTE LAND COMPANY, a  
Corporation.

WARRANTY DEED.

Dated September 16, 1926.

Properly acknowledged.

Filed November 24, 1926.

Recorded in Deed Book 41 N. S.

Page 206.

Consideration: \$500.00.

CONVEYS:

Begin at a point in the Northeast Quarter of Northeast Quarter of Section 16, Township 2 South Range 3 East, of St. Stephens Meridian, being the intersection of the south line of the field known as Hamilton Field, and the East line of a 3 acre tract owned now or formerly by Stanmyres, thence running due south along the last line of said Stanmyres tract 692.5 feet to the northerly line of Brady Road, thence running southeasterly along the northerly line of Brady Road as it turns the following distance; 215 feet to a point; 367 feet to a point; 127.5 feet to a point; 408 feet to a point on the westerly line of the Right of Way of the Lay Minette and Fort Morgan Railroad; thence running northeasterly along the westerly line of the right of way of the Lay Minette and Fort Morgan Railroad 1088 feet to a tract of about  $\frac{1}{2}$  acre belonging to Peoples Fertilizer Company, thence along three sides of the land of the Peoples Fertilizer Company as follows: westerly 150 feet to a point; northeasterly 150 feet to a point southeasterly 150 feet to a point in the westerly line of said right of way, thence northeasterly along said westerly line of said right of way 55 feet; thence northwesterly 491.7 feet to a point on the south boundary line of said Hamilton Field 120 feet southwesterly from the southeast corner thereof, thence southwesterly along the south line of said Hamilton Field 745.8 feet to the point or place of beginning, containing 24 $\frac{1}{2}$  acres, more or less.

BAY MINETTE LAND COMPANY,  
a corporation,

Plaintiff,

-vs-

W. D. STAPLETON AND HENRY  
D. MOORER,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY. No. \_\_\_\_\_

BOND FOR INJUNCTION PENDENTE LITE

KNOW ALL MEN BY THESE PRESENTS, that we, the Bay Minette Land Company, a corporation, and the National Surety Company, a corporation, are held and firmly bound unto the said W. D. Stapleton and Henry D. Moorner in the sum of \$750.00, for the payment of which well and truly to be made, we jointly and severally bind ourselves, our successors and assigns.

Sealed withour seals and dated this 26th day of September, 1930.

The condition of the above obligation is such that, whereas, on the 26th day of September, 1930, the above named complainant procured the issuance by the <sup>Register</sup> ~~clerk~~ of the Circuit Court of Baldwin County, Alabama, of a writ of injunction pendente lite in the above styled cause directed to the said W. D. Stapleton and Henry D. Moorner, enjoining them or either of them, their servants, agent or employees from foreclosing or attempting to foreclose, pending said suit, that certain mortgage executed by the said Bay Minette Land Company, a corporation, in favor of the said W. D. Stapleton and Henry D. Moorner, dated the 8th day of December, 1928, and recorded in Mortgage Book 44 at page 445, in the Probate Records of Baldwin County, Alabama, and also commanding them not to sell the property described in said mortgage at the sale advertised to be held during the legal hours of sale on September 27th, 1930, in front of the Court House at Bay Minette, Baldwin County, Alabama, until the further orders of this court.

Now, therefore, if the above bound Bay Minette Land Company, a corporation, shall pay all damage and cost which any person may sustain by the suing out of such injunction, if the same is dissolved, then this obligation shall be void; otherwise it shall remain in full force and effect.

*Taken and approved  
Sept 26<sup>th</sup> 1930  
T. W. Rieunover  
Register*

BAY MINETTE LAND COMPANY,

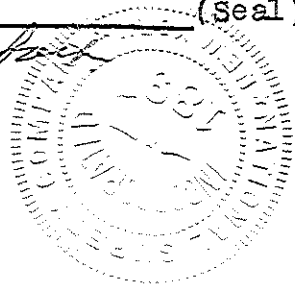
By *Wm. G. Calley* (Seal)

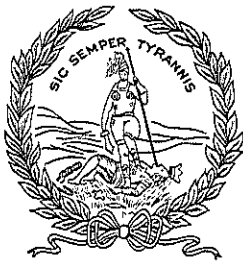
*Its Atty in fact.*

NATIONAL SURETY COMPANY,

By *P. F. Manner* (Seal)

*Its Atty in fact.*





BOARD OF SUPERVISORS  
A. L. DIXON, CHAIRMAN

J. G. CRENSHAW

COUNTY CLERKS OFFICE  
*Elizabeth City County*  
HAMPTON, VIRGINIA

R. E. WILSON, CLERK

April 2, 1948

J. WILTON HOPE, JR.  
ATTORNEY FOR THE COMMONWEALTH

Telfair J. Mashburn, Jr.  
Attorney At Law  
Bay Minette, Alabama

Dear Sir:

Replying to your inquiry of March 30, this is to advise that a mensa decree was entered June 5, 1945 in the chancery cause of Willis Trent Kennedy vs. Katie Gray Kennedy. There have been no further proceedings since that time in this court. Should you desire a certified copy of the a mensa decree, we shall be pleased to furnish same upon receipt of one dollar, and fifty cents (\$1.50).

Very truly yours,

R. E. Wilson, Clerk

By *S. M. Gibson*  
S. M. Gibson  
Deputy Clerk.

SMG/nrb



STATE OF ALABAMA,  
BALDWIN COUNTY.

) IN THE CIRCUIT COURT OF  
) BALDWIN COUNTY, ALABAMA.

IN EQUITY.

To Any Sheriff of the State of Alabama - Greeting:

We Command You, That, without delay, you execute this writ, and  
due return thereof how you have executed the same, make to us on the  
2nd Monday of November, 1930.

To W. D. Stapleton and Henry D. Moorer:

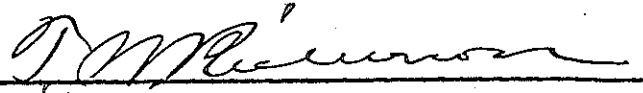
Whereas, the Bay Minette Land Company, a corporation, has on the  
23rd day of September, 1930, filed its Bill of Complaint in  
said Court against you praying, among other things, that you be  
restrained from foreclosing that certain mortgage executed by the said  
Bay Minette Land Company in favor of the said W. D. Stapleton and  
Henry D. Moorer, dated December 8th, 1928, and recorded in Mortgage  
Book 44 at page 445, in the Probate Records of Baldwin County, Alabama,  
under the power of sale contained therein;

And Whereas, on said Bill being exhibited to the Hon. Francis W.  
Hare, Judge of the Circuit Court of Baldwin County, Alabama, on the  
25th day of September, A. D., 1930, we did order that upon complain-  
ant's entering into a bond with sureties in the sum of \$750.00 payable  
to the said W. D. Stapleton and Henry D. Moorer, and approved by the  
Register of this Court, and conditioned according to law, a writ  
of injunction issue out of said Court <sup>pendente lite</sup> according to the prayer of said  
Bill; and Whereas, bond has been given and approved as required by  
said order;

These therefore, are to command and strictly enjoin you, <sup>or either of you,</sup> your  
servants, agents or employees, from foreclosing or attempting to  
pending said suit,  
foreclose that certain mortgage executed by the Bay Minette Land  
Company, a corporation, in favor of the said W. D. Stapleton and Henry  
D. Moorer, dated the 8th day of December, 1928, and recorded in  
Mortgage Book 44 at page 445, in the Probate Records of Baldwin County,  
Alabama; and you are further expressly commanded and strictly enjoined

not to sell the property described in said mortgage at the sale advertised to be held during the legal hours of sale on September 27th, 1930, in front of the Court House of Bay Minette, Baldwin County, Alabama, until the further orders of this Court. And this you will in no wise omit under penalty, etc.

Witness, T. W. Richerson, Register of the Circuit Court of Baldwin County, Alabama, Equity Side, this 26th day of September, 1930.



Register of the Circuit Court of Baldwin County, Alabama.

THIS AGREEMENT, made and entered into this the 20th day of January, 1930 by and between the Louisville and Nashville Railroad Company, first party, and W. D. Stapleton & W. M. Stuart of Bay Minette, County of Baldwin and State of Alabama, second party.

WITNESSES,

That the parties hereto have agreed to the ownership and maintenance upon the terms hereinafter set out of a side track of about 594.5 feet in total length, which, including switches and all other track material, is hereinafter collectively termed "track." Said track is located at or near Bay Minette in the County of Baldwin State of Alabama diverging from the main track on the Foley Branch of M. & M. Division of said Railroad on the West side thereof 2878.5 feet North of Mile Post No. 643 from Louisville and running in a southerly direction in accordance with the following sketch:

Shown in yellow on blue print sketch attached.

It is understood by the parties, that the track covered by this agreement is a portion of a track heretofore constructed under contracts, dated January 10, 1913 and May 3, 1923, between the first party and the Bay Minette Land Company.

The above mentioned contracts are hereby cancelled.

In consideration of the assumption by the first party of the obligation to hereafter maintain and renew that part of said track from switch point to clearance point, a distance of 161 feet, including switch ties, which obligation first party hereby expressly assumes, and the release of the obligation to pay rental on the rails and splices laid in said turnout, second party does hereby release, transfer and assign to first party, all right title and interest in or to that part of said track from switch point to end, but should said track be taken up, second party shall be entitled to recover the track material, (except rails and splices) or the salvage value thereof from that portion of the track from clearance point to the end.

Second party agrees to pay rent for said rails and splices used in said track beyond the clearance point at the rate of \$1.75 (one dollar and seventy-five cents) per gross ton per annum, beginning when rental shall next become due, and that when said rental on rails and splices next becomes due it shall be collected to January 1st 1931, and shall thereafter become due and payable annually on January 1st of each succeeding year.

(5) The first party hereby reserves the right and it is fully authorized at its pleasure, without let, hindrance or previous notice, to disconnect said track from its track, and take up and remove said rail, frog, switch fixtures and all other track material from first party's right of way.

For all purposes of this agreement, clearance point is defined as that point where the track (if it diverges from one of first party's tracks) first reaches a clear distance of 13 feet from first party's track, measured from center line of one track to center line of the other track; provided, if said track passes beyond first party's right of way line before its center line reaches a clear distance of 13 feet from center line of the track from which it diverges, the point where said center line crosses said right of way line shall be considered the clearance point for the purpose of this agreement; and provided further, that if another track diverges from said track between switch point in first party's track and clearance point, as above defined, the clearance point for the purposes of this agreement shall be considered to be the switch point of said second track.

(8) Where track covered by this agreement diverges from first party's track, first party will maintain and renew at its expense

that portion of said track from switch point to clearance point. The remainder of said track shall be maintained and kept in good condition at the expense of the second party; and if, at any time, first party shall deem it necessary to make any repairs to or renewals of that part of said track beyond the clearance point, or substitute heavier rails, frogs or switches for the ones originally used therein, the second party agrees to pay the actual cost of materials used (other than rails and splices) and labor expended for such repairs, renewals or replacements, according to accounts kept of same by the first party; the increased weight of such heavier rails and splices to be added to amount on which second party pays rent.

(9) In case any track, constructed under this contract, connects with track of first party in territory where train movements are protected or controlled by automatic or other signals, or train control devices, the cost of all changes in or additions to such signal system or train control devices required because of the construction of such track shall be paid by the second party as a part of the cost of constructing the turnout, and subject to the refund provided for in paragraph 6 hereof.

(10) Upon the termination of this contract for any reason, the second party agrees and binds itself to pay to the first party the actual cost of removing that portion of said track beyond the clearance point, according to accounts kept of same by the first party.

(11) Second party further agrees that it will, within ten days after demand therefor by first party, pay to first party, cash in advance, the estimated cost of any of the several expenditures hereinabove provided to be made by first party, any excess of actual expenditure over the estimate to be paid by second party promptly on demand, and any excess of the estimate over actual expenditure to be promptly repaid to second party, without demand, or credited upon any existing debt due from second party to first party.

(12) Second party further covenants and agrees with the first party that it will hold the first party harmless against the claims of abutting property owners who may claim damages for, or on account of, the construction or operation of the said track.

(13) Second party agrees that it will not construct any overhead structure lower than 22 feet above the top of the rail of said track, or any structure within 8 feet from center line of said track, and that it will not place or permit any structures or obstructions, of either a permanent or temporary nature, on said track, or within the limits of the horizontal and vertical clearances above provided; and further agrees that it will indemnify and save harmless the first party against and from any and all claims for loss of or damage to property or injury to person caused directly or indirectly by the existence, location or condition of any structures or obstructions of any kind on the premise of second party, or by any structures or obstructions of either a permanent or temporary nature, on said track, or within the limits of the clearances above provided. Knowledge of or notice to the first party of the existence, location or condition of any structures or obstructions of any kind on the premises of the second party, and its continued operation of the track thereafter, shall not be a waiver of this covenant.

(14) It is understood that the movement of railroad locomotives involves some risk of fire, and second party assumes all responsibility for and agrees to indemnify first party against loss or damage to property of second party or to property upon its premises, regardless of railroad negligence, arising from fire caused by locomotives operated by first party on said track, or in its vicinity for the purpose of serving said second party, except to the premises of first party and to rolling stock belonging to first party or to others, and to shipments in the course of transportation.

(15) The second party also agrees to indemnify and hold harmless first party against loss, damage, or injury from any act or omission of second party, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said track; and if any claim or liability shall arise from the joint or concurring act or omission of both parties hereto, their employees or agents, each party shall assume all liability for and indemnify the other party against loss, damage or injury to its own employees and to its own property and the property of others in its care or custody, and liability for loss, damage or injury not herein provided for shall be borne by the parties equally. Provided, that nothing in this section contained is intended to or shall relieve second party of the obligations of release and indemnity contained in Sections 12, 13, 14 and 16.

(16) In case it is necessary for second party to move cars from place to place, either loaded or empty, on any of the tracks covered by this contract, second party will delegate for that purpose only employees experienced in the handling of cars; and if any cars or rolling stock, belonging to first party or for the safe condition of which it is responsible, are damaged or destroyed, or the lading thereof damaged or destroyed, or damage result to the tracks or equipment or structures or property of first party, or any damage to person or loss of life occur as a consequence of such movement, then, whether such damage to property or injury to person or loss of life shall result from improper handling of said cars on the part of the second party's employees or from or by reason of the defective condition of such cars or their equipment, or otherwise, second party will, on demand, reimburse first party for all damage to its property or property for which it is responsible, and it will indemnify and save harmless first party against the claims and demands of any and all persons on account of damage to property, injury to person or loss of life.

(17) Second party further agrees, that in the event of a default in the payment of the several expenditures contemplated in paragraphs 2 and 8 to 10, both inclusive, or in the advance payment of the estimated cost of such expenditures, or in reimbursement and indemnity contemplated in paragraphs 12 to 16 inclusive, the first party may, without notice cease to deliver cars to, or remove cars from, the tracks constructed under this contract until such default or defaults have been remedied.

The right herein granted shall be without prejudice to the rights reserved in paragraphs 5 and 22, or to any other rights or remedies at law or in equity.

(18) Should the business done on track covered by this contract at any time be insufficient, in the judgment of first party, to justify it in maintaining turnout as provided for in paragraph 8 hereof, and if second party shall not desire first party to discontinue the track, first party may at its option require second party to bear the entire cost of maintenance and renewal of turnout from first party's track. But such requirement shall in no wise affect the right of first party to later disconnect said track and remove all track material from its right of way, should first party deem it desirable so to do, under the provisions of Section 5 hereof.

(19) If, in order to construct, maintain and operate track covered by this contract, it is necessary to cross any public way, and if the consent of any public body shall be required, second party shall obtain such consent and bear the cost of compliance with any requirement that may be imposed.

(20) In consideration of first party maintaining the turn-out connecting with its track, the first party shall have the right to use the track covered by this contract for common carrier purposes when such use will not interfere with its use for the benefit of second party; and first party agrees that it will not knowingly deliver or receive shipments for others on said track without the written consent of second party, and second party agrees that it will not direct or permit the use of said track by or for the benefit of others without written consent of first party, it being the purpose and intent of this contract, to which second party expressly agrees, that if said track is used by or for the benefit of others without the written consent of first party, second party shall and will hold first party harmless and indemnify it against all loss or damage resulting therefrom.

(22) Whenever, and as often as, the payment of any sums of money due by second party to first party, under any of the provisions of this contract, shall become due, a lien to secure said sums shall forthwith become fixed upon said track material, which lien shall become extinguished only by the payment of the sum or sums due.

(23) It is expressly understood and agreed that this contract is personal to the second party, and can be assigned only with the written consent of the first party; and that as a condition precedent to such consent, first party will require the assignee to assume any indebtedness due from second party, arising under any of the provisions of this contract.

Witness to the signatures of the parties;

Executed in duplicate.

LOUISVILLE & NASHVILLE RAILROAD  
COMPANY.

WITNESSES to the signature of:

By (Sig) W. E. Smith  
As its Asst. General Manager

W.D. Stapleton,

By (Sig) W. D. Stapleton

(Sig) Norborne Stone

(Sig) Ida M. Turnbull

W. M. Stuart

By (Sig) W. M. Stuart

(Sig) Norborne Stone

(Sig) Ida M. Turnbull

SUPERINTENDENT

Cont #1060

24632

Memorandum to be attached to contract dated June 17th 1925, between the LOUISVILLE & NASHVILLE RAILROAD COMPANY, and the BAY MINETTE LAND COMPANY, providing for the construction and maintenance of a spur track at Bay Minette, Alabama, known as No. 6-B, V-58 Map 1.

By agreement of the parties hereto the track covered by the within contract shall be and is hereby transferred to W. D. Stapleton and W. M. Stuart, upon the same terms and conditions, except that the rental rate on the rails and splices shall be \$1.75 (one dollar and seventy-five cents) per gross ton per annum, beginning when rental shall next become due, and that when the said rental, on the rails and splices, next becomes due it shall be collected to January 1st 1931, and shall thereafter become due and payable on January 1st of each succeeding year.

W. D. Stapleton and W. M. Stuart, agree to perform and abide by all the stipulations, terms and conditions of said contract, the same as if it had been made with W. D. Stapleton and W. M. Stuart, instead of with the Bay Minette Land Company.

The Louisville & Nashville Railroad Company accepts W. D. Stapleton and W. M. Stuart, as parties to said contract in lieu of the Bay Minette Land Company.

WITNESS the signatures of the parties, this the 20th day of January 1930.

Executed in duplicate:

WITNESSES TO THE signature of:

W. D. Stapleton

(Sig) Norborne Stone

(Sig) Ida M. Turnbull

W. M. Stuart

(Sig) Norborne Stone

(Sig) Ida M. Turnbull

LOUISVILLE & NASHVILLE RAILROAD COMPANY

BY (Sig) W. E. Smith  
Asst General Manager

As its \_\_\_\_\_

By (Sig) W. D. Stapleton

By (Sig) W. M. Stuart

SUPERINTENDENT

(Letter File 17074)

Form 600 - Revised October, 1923 - Sheet 1.

This cont. transferred to Stapleton  
& Stuart by Memorandum cont. of  
Jan'y 20th 1930

DEB

THIS AGREEMENT, made and entered into this the 17th day of June, 1925, by and between the Louisville and Nashville Railroad Company, first party, and Bay Minette Land Company, Inc., of Bay Minette, County of Baldwin and State of Alabama, second party.

WITNESSES,

(1) That the first party agrees and binds itself to furnish the necessary rails and other track material, and construct a spur track of about 331 feet in total length. Said track to be located at or near Bay Minette in the County of Baldwin, State of Alabama, diverging from Bay Minette Land Co.'s siding B. M. & FT. Morgan Br. of M. M. Division of said Railroad on the west side thereof 2626 feet north of Mile Post No. 643 from Louisville and running in a south-westernly direction in accordance with the following sketch:



(2) The second party agrees to do the necessary grading and pay the actual cost of labor of laying said track, and the cost of all other material except rails and splices; and the second party also agrees to pay rent at \$2.10 per gross ton per annum, payable semi-annually in advance from the date of completion of the track, for the use of the rails and splices used in the construction of said track.

(3) The second party also grants and conveys to first party a right of way Fifteen (15) feet in width on each side of the center line of each and every track constructed under this contract for the full length thereof, excepting such portion of said track as may be located on the land of first party; but the right of way so granted shall revert to second party when said track - removed by first party.

(4) The value of the materials for the purpose of this contract is fixed as follows:

ARTICLES	RATE
Bolts, Track ..... per keg .....	9.58
Foot guards ..... each .....	1.25
Frogs, No. 8 - 90 lb ..... each .....	87.23
" " lb ..... each .....	
* Guard rails complete 11 ft 90 lb.. each .....	21.06
* " " " ft lb.. each .....	
Guard rail clamps ..... lb.. each .....	5.81
" " " lb.. each .....	
Nut locks ..... per keg .....	13.39
Spikes ..... per keg .....	2.23
* Switches ... 16'6" ft.....lb.. each .....	110.22
* " " ft.....lb.. each .....	
Switch derails ..... each .....	39.14

ARTICLES	RATE
Switch heel blocks ..... each .....	
Switch lamps ..... each .....	
Switch locks ..... each .....	.75
Switch point guards ..... each .....	1.65
* Switch stands ..... each .....	19.79
* " " ..... each .....	
Switch stand latches ..... each .....	
Tie Plates, intermediate ..... each .....	.23
" " joint ..... each .....	

\* Points, bridle rods, head and second rods and friction plates.

+ Includes connecting rod.

+ Includes tie plates and "safety" foot guards.

(5) Said rails and splices, and any renewals thereof, are and shall remain the exclusive individual personal property of first party, together with the entire control of same; and first party hereby reserves the right, and it is fully authorized at its pleasure without let or hindrance, or previous notice, to take up and remove the rails and splices from said track - and to take up and remove all other track material from so much of said track - as is located on first party's land or original right of way.

(6) The said track - shall be maintained and kept in good condition at the expense of second party; and if, at any time, first party shall deem it necessary to make any repairs to or renewals of said track, or if, because of a change in the standard of rail in first party's tracks or for any other reason, first party shall deem it necessary to substitute heavier rails, frogs and switches for the ones originally used, second party agrees to pay the actual cost of materials used and labor expended for such repairs, renewals or replacements, except the rails and splices, according to accounts kept of same by first party; the increased weight of such heavier rails and splices to be added to the amount on which second party pays rent.

(7) It is agreed that the entire cost of all switch ties required by or on account of tracks constructed under this contract, including those used in the connection of the tracks of second party with the tracks of first party, and the cost of all repairs to or renewals of said switch ties shall be paid by second party as a part of the cost of construction or maintenance of said tracks.

(8) In case any tracks, constructed under this contract, are within territory where train movements are protected or controlled by automatic or other signals, or train control devices, the cost of all changes or additions to such signal system or train control devices required because of the construction of such track or tracks shall be paid by second party as a part of the cost of constructing such track or tracks.

(9) In case any track or tracks, constructed under this contract, are not within territory where train movements are protected or controlled by automatic or other signals or train control devices, second party agrees that should first party at any future time, construct or install any system of signals or train control devices in the territory within which the said track or tracks are located, second party shall pay to the first party the additional cost of such signal system or train control devices caused by the existence or location of such track or tracks.

(10) Second party agrees to pay the cost of maintaining and operating any additional signal system or train control devices that it may be necessary to install because of the construction, existence or location of any track or tracks constructed under this contract as provided in the two preceding paragraphs.

(11) Second party also agrees to take care of and keep in order, fill, trim, light and extinguish the lamp -- of the switch -- of said track, in accordance with first party's rules and regulations, or pay the cost of such work done by first party.

(12) Upon the termination of this contract for any reason, second party hereby agrees and binds itself to pay to first party the actual cost of removing the said track, - according to accounts kept of same by first party.

(13) Second party further agrees that it will, within ten days after demand therefor by first party, pay to first party, cash in advance, the estimated cost of any of the several expenditures hereinabove provided to be made by first

party, subject to reimbursement by second party, in paragraphs numbered 2 and 6 to 12, both inclusive; any excess of actual expenditure over the estimate to be paid by second party promptly on demand, and any excess thereof to be promptly repaid to second party, without demand.

(14) And second party hereby further covenants and agrees with first party that it will hold first party harmless against the claims of abutting property owners who may claim damages, for, or on account of, the construction or operation of the said track.

And second party also agrees to place no overhead structures lower than 22 feet above the top of the rail of said track, and to place no structure closer than eight feet from the center of the track, and to keep the track free from obstructions; and agrees to hold first party harmless from the claims and demands of any and all persons on account of any damages or injuries caused directly or indirectly by the existence, location or condition of any structures or obstructions of any kind on the premises of second party, by any obstructions on said track, or which may, either directly or indirectly, arise out of the maintenance of said track - or the operation of the rolling stock of first party on said track. Knowledge of or notice to first party of the existence, location or condition of any structures or obstructions of any kind on the premises of second party and its continued operation of the track thereafter, shall not be a waiver of this covenant.

(15) It is understood that the movement of railroad locomotives involves some risk of fire, and second party assumes all responsibility for and agrees to indemnify first party against loss or damage to property of second party or to property upon its premises, regardless of railroad negligence, arising from fire caused by locomotives operated by first party on said track, or in its vicinity for the purpose of serving second party, except to the premises of first party and to rolling stock belonging to first party or to others, and to shipments in the course of transportation.

Second party also agrees to indemnify and hold harmless first party for loss, damage, or injury from any act or omission of second party, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

(16) In case it is necessary for second party to move cars from place to place, either loaded or empty, on any of the tracks covered by this contract, second party will delegate for that purpose only employees experienced in the handling of cars; and if any cars or rolling stock, belonging to first party or for the safe condition of which it is responsible, are damaged or destroyed, or the lading thereof damaged or destroyed, or damage result to the tracks or equipment or structures or property of first party, or any damage to person or loss of life occur as a consequence of such movement, then, whether such damage to property or injury to person or loss of life shall result from improper handling of said cars on the part of the second party's employees or from or by reason of the defective condition of such cars or their equipment, or otherwise, second party will, on demand, reimburse first party for all damage to its property or property for which it is responsible, and it will indemnify and save harmless first party against the claims and demands of any and all persons on account of damage to property, injury to person or loss of life.

(17) Second party agrees to indemnify and save harmless first party against all assessments for public improvements which may be assessed against first party on account of the right of way conveyed to it by second party in paragraph three hereof.

(18) Second party further agrees that, in the event of a default in the payment of rental reserved in paragraph 2, or in the payment of the several expenditures contemplated in paragraphs 6 to 12, both inclusive, or in the advance payment of the estimated cost of such expenditures, or in reimbursement and indemnity contemplated in paragraphs 14, 15, 16 and 17, first party may, without notice, cease to deliver cars to, or remove cars from, the tracks constructed under this contract until such defaults have been remedied. The right herein granted shall be without prejudice to the rights reserved in paragraph 19, or any other rights or remedies at law or in equity.

(19) First party retains a lien upon all track material, and the land herein conveyed as a right of way until second party shall have completed payment for said track material, and all other expenditures incurred by first party in the construction of said tracks. Whenever, and as often as, the payment of any sums of money due by second party to first party under any of the provisions of this contract shall become due, a lien to secure said sums shall forthwith become fixed upon said track material and the right of way herein granted, which lien shall become extinguished only by the payment of the sum or sums due.

(20) It is expressly understood and agreed that this contract is personal to second party, and can be assigned only with the written consent of first party; and that as a condition precedent to such consent, first party will require the assignee to assume any indebtedness due from second party, arising under any of the provisions of this contract.

In testimony whereof, the parties have hereunto subscribed their names the day above written.

EXECUTED IN DEPLICATE.

LOUISVILLE & NASHVILLE RAILROAD COMPANY:

By (Sig) T. E. BROOKS

AS IT'S GENERAL MANAGER

BAY MINETTE LAND COMPANY, INC.

BY (Sig.) HAMPTON D. EWING

AS IT'S PRESIDENT

Witnesses to the signature of the Bay Minette Land Co., Inc.

(Sig.) DeWitt C. Flanagan

(Sig.) B. M. Lenou

THE STATE OF ALABAMA,

BALDWIN COUNTY.

I, Henry D. Moorner, a Notary Public in and for said county in said state, hereby certify that Hampton D. Ewing, whose name as President of the Bay Minette Land Co. Inc., a corporation, is signed to the foregoing conveyance, and who is known to me acknowledged before me this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office, this 24th day of October, 1925.

(Sig.) Henry D. Moorner  
Notary Public.

CLASS OF SERVICE DESIRED

DOMESTIC	CABLE
TELEGRAM	FULL RATE
DAY LETTER	DEFERRED
NIGHT MESSAGE	CABLE LETTER
NIGHT LETTER	WEEK END LETTER

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

COPY OF  
WESTERN UNION TELEGRAM

February 3rd, 1930.

Hon. H. D. Ewing,

160 Broadway, N. Y.

Please wire me when check matter has  
been arranged. It is very urgent.

Henry D. Moorer.

chg 101.

*Resubmit  
Ex. I*

Ex 12

CABLE ADDRESS, "EWINGEWING NEWYORK"

HAMPTON D. EWING  
COUNSELOR AT LAW

160 BROADWAY, NEW YORK

TELEPHONE  
CORTLANDT-2308  
HITCHCOCK 0367

April 18, 1930

Henry D. Moorer, Esq.,  
Bay Minette, Alabama.

Dear Mr. Moorer:

I sent you today \$1000. to make the last payment on the \$3000. mortgage. There is a little balance due, but I want you to turn the mortgage and note over to Miss Cain and cancel the mortgage of record in Escambia County, and trust me for the small balance that is yet due. I have not your statement before me.

Now that the matter is over I want to tell you that you would have had your money three months ago if you had not sent the notice you did to the Pensacola Excelsior Company. You drove them off Section Nine-teen, although they were ahead of you and did not need your notice, but that kept me from getting <sup>in</sup> \$2000. for timber. They never came back to finish their cut and a lot of their timber has been ruined by lying in the woods. That was a mistake that did me considerable harm and did not help you a bit. Please be careful and not make a break like that again.

Yours very truly,

*Hampton D. Ewing*

*Respectfully*  
*Ex K*

The State of Alabama, {  
Baldwin County

CIRCUIT COURT OF BALDWIN COUNTY,  
IN EQUITY

To Any Sheriff of the State of Alabama---GREETING:

WE COMMAND YOU, That you summon BAY MINETTE LAND COMPANY,

W.D.STAPLETON, and HENRY D.MOORER

of BALDWIN County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a <sup>cross</sup> Bill of Complaint lately exhibited by J.T.BRADLEY

against said BAY MINETTE LAND COMPANY, W.D.STAPLETON, and HENRY D.MOORER

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 18th day of

MARCH

193 2

T. W. Richerson Register.

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.



(ORIGINAL)

Serve on \_\_\_\_\_

Circuit Court of Baldwin County  
In Equity.

No. \_\_\_\_\_

SUMMONS

J. T. BRADLEY

vs.

BAY MINETTE LAND COMPANY,

W. D. STAPLETON, & HENRY D.

MOORE

Stevens, McCarvey, McLeod,  
Goode & Turner

Solicitor for Complainant.

Recorded in Vol. \_\_\_\_\_ Page \_\_\_\_\_

J. L. Co 3/18

The State of Alabama,  
BALDWIN COUNTY.

Received in office this \_\_\_\_\_

day of \_\_\_\_\_ 193 \_\_\_\_\_

Sheriff.

Executed this 18<sup>th</sup> day of

March 193 2

by leaving a copy of the within Summons with

W. D. Stapleton & H. D. Moore  
Mrs. Loda Cam as mgr  
for Bayminette Land Co  
Defendant.

W. H. Stewart  
Sheriff.

By \_\_\_\_\_

Deputy Sheriff.

**The State of Alabama**  
**Baldwin County--Circuit Court**

TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETING:

In Equity,  
 Whereas, at a Term of the Circuit Court of Baldwin County, held on the 24th  
day of April ~~Monday~~ 1931  
 in a certain cause in said Court wherein Bay Minette Land Company,  
was Plaintiff, and W.D. Stapleton and Henry Moorner  
Defendant, a judgment was rendered against said  
Bay Minette Land Company,  
 to reverse which Judgment, the said Bay Minette Land Company,  
 has on this day applied for and obtained from this office an APPEAL, returnable to the  
Next Term of our Supreme Court of the State of Alabama, to  
 be held at Montgomery, on the 5<sup>th</sup> day of October, 1931 next,  
 and the necessary bond having been given by the said Bay Minette Land Company,  
with National Surety Company,  
as sureties,

Now, You Are Hereby Commanded, without delay, to cite the said  
W.D. Stapleton and H.D. Moorner,  
 or H.D. Moorner as attorney, to appear at the  
Next Term of our said Supreme Court, to defend against the said  
 Appeal, if they, think proper.

WITNESS, T. W. Richerson, Clerk of the Circuit Court of said County, this 23rd  
 day of June, A. D., 1931.

Attest:

T. W. Richerson Clerk.

Executed June 23<sup>rd</sup>  
1931 by serving  
copy of within  
Citation on  
W.D. Stapleton and  
H.D. Moorer

Lee R. Stuart  
Sheriff

By R.M. Phaul

Original

## CIRCUIT COURT

BALDWIN COUNTY, ALA.

Bay Minette Land Co

vs. { Citation in Appeal

H.D. Moorer and W.D. Stapleton

Issued 23rd day of June 1931.

Moore Ptg. Co., Bay Minette

~~Order of Acceptance~~

Copy served on  
H.D. Moorer June

FILED

*[Handwritten signature]*

REPORT OF REGISTER AS TO SALE OF LANDS.

BAY MINETTE LAND COMPANY,

Complainant,

VS.

W. D. STAPLETON, et als,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER \_\_\_\_\_.

TO THE HONORABLE F. W. HARE, JUDGE OF SAID COURT:

WHEREAS, a Decree was rendered in the above entitled cause by this Court on the 29th day of July, 1932, that unless the Complainant pay to the Respondent and Cross-Complainant, J. T. Bradley, the amount of \$2,842.66 with interest thereon at the rate of 8% from the date of said decree, the sum decreed to be due the Respondent and Cross-Complainant, J. T. Bradley, from the Complainant upon the claim in the Cross Bill of the said J. T. Bradley, within sixty days from the date of the said Decree, the Register of said Court proceed, without delay, to sell the lands described as Parcel 1 in the said Decree and hereinafter described, and report his action therein to the said Court; and

WHEREAS, said Decree so rendered also provided that the Register of this Court proceed without delay, to sell as a separate parcel the land described as Parcel 2 in said Decree and hereinafter particularly described, and apply the proceeds thereof first, to the payment of the costs in this cause, next the amount of \$130.09 to the Complainant and the remainder, if any, to the Respondent and Cross-Complainant, J. T. Bradley, and report his action therein to this Court;

NOW THEREFORE, I, Robert S. Duck, Register of said Court, do hereby certify and report that the Complainant having wholly failed and refused to comply with the requirements of said decree within the time specified, I did, on Monday, the 18th day of November, A. D. 1935, after advertising the time, place and terms of sale, together with a description of the lands, in the Baldwin Times, a newspaper published in Baldwin County, Alabama, once a

week for three successive weeks, and posting a notice thereof for thirty days prior to said sale, at the front door of the Court House of said County, sell at public outcry, to the highest bidder for cash, in front of the door of the Court House of said County, the following lands, to-wit:

Parcel No. 1 is as follows:

Lot Numbered 7 in Block Numbered 1; all of Block Numbered 2; all of Block Numbered 3 and all of Lot Numbered 6 in Block Numbered 1 except the following described property: Commencing at the Northeast Corner of said Lot 6 run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet; thence Westwardly and parallel with the North line of the said Lot Six 155 feet; thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of the said Lot 6; thence Eastwardly along the North line of the said lot 6 to the point of beginning; all in Ft. Morgan Addition to Bay Minette, Alabama, a subdivision of a part of the East half of the Northeast Quarter of Section Sixteen (16) Township Two (2) South Range Three (3) East in Baldwin County, Alabama, according to the official plat thereof of record in Map Book Number 1 at page 127 in the Probate Records of Baldwin County, Alabama.

and also as a separate parcel, the following lands, to-wit:

Parcel No. 2 is as follows:

All that portion of the East half of the Northeast Quarter ( $E\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section Sixteen (16), Township Two (2) South, Range Three (3) East, being all of Lots One (1), Two (2), Three (3), Four (4), Five (5), Eight (8), Nine (9), Ten (10) and Eleven (11) and that part of Lot Six (6) described as follows: Commencing at the Northeast corner of the said lot six (6), run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet, thence Westwardly and parallel with the North line of said lot Six (6) 155 feet, thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of said lot Six (6), thence Eastwardly along the North line of said Lot Six (6) to the point of beginning, all in Block One (1) as shown on that map entitled Ft. Morgan Addition to Bay Minette, made by D. F. Albin, Engineer, dated June 12th, 1929 and filed for record June 14th, 1929, in the office of the Probate Judge of Baldwin County, Alabama.

Also all and the entire right, title and interest conveyed by Bay Minette Land Company to W. D. Stapleton in and to the oil track spur and that portion of the side track along the B. M. & Ft. M. Branch of the L & N Railroad Company lying opposite the Ft. Morgan Addition to the Town of Bay Minette, lands of Peoples Fertilizer Company and land adjoining Peoples Fertilizer Company on the North, insofar as such tracks are North of the South line of the real estate hereinabove described, together with all rights and monies to become due under rental agreement with the Pan American Petroleum Corporation after the 6th day of November, 1930.

at which sale J. T. Bradley became the purchaser of Parcel 1 of said lands hereinabove set forth and particularly described for and

at the sum of One Thousand Dollars (\$1,000.00) which was the best bid for the same at said sale, and at which sale the said J. T. Bradley became the purchaser of Parcel 2 of said lands at the sum of One Hundred Dollars (\$100.00), which was the best bid for same at said sale.

I further certify that out of the proceeds of said sale I retained the sum of One Hundred Dollars (\$100.00), as cost of suit, commissions and expenses of sale and I applied the said amount of \$1,000.00 to the satisfaction of the Respondent and Cross-Complainant's demand as far forth as it would extend.

I further certify that there is still due Respondent with interest at 8 % from Nov. and Cross-Complainant, J. T. Bradley, the sum of \$2593.58/ from Complainant, Bay Minette Land Company.

All of which is respectfully submitted this 12th day of August, 19 38.

Reed-  
Register.

RECORDED *Duch*  
7-579.80

REPORT OF REGISTER AS TO SALE  
OF LANDS.

BAY MINETTE LAND COMPANY,  
Complainant,

VS.

W. D. STAPLETON, et als,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NUMBER \_\_\_\_\_.

Filed this 12 day Aug 1928  
R. S. Duch  
Clerk-Register

100.00  
3489

74 1/2  
19.55  
49.66

2289  
340  
2589

933

74  
34655

74 1/2  
24.53  
49.66

-----  
Bay Minette Land Company, :  
Complainant, :

-vs- :

W. D. Stapleton and Henry D. :  
Moorer, :  
Respondents. :  
-----

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

TO THE HONORABLE FRANCIS W. HARE, JUDGE:

Comes C. M. A. Rogers, heretofore on the \_\_\_\_\_ day of  
November, A. D. 1930, appointed Special Master by your Honor  
to hear the cause and ascertain the amount, if any, to be paid  
by the complainant, Bay Minette Land Company, a corporation,  
to the respondents, W. D. Stapleton and Henry D. Moorner, and  
reports as follows:

I have examined carefully the testimony and accountings  
and the briefs submitted me by counsel in this proceeding.

The testimony taken in this cause shows that there are  
two mortgages which must be considered in arriving at a proper  
accounting between the parties hereto. The first of these  
mortgages was one made by Hampton D. Ewing, Esq., with Messrs.  
W. D. Stapleton and Henry D. Moorner. It was represented by  
two principal notes, each executed as of December 8th, 1928,  
in the sums of \$1,000.00 and \$2,000.00 respectively. The other  
mortgage from Bay Minette Land Company to Messrs. Stapleton and  
Moorner was for \$5,000.00, and according to the statement set  
out in the mortgage the principal amount was secured by a prom-  
issory note for \$5,000.00 bearing date of December 8th, 1928.



The accounting submitted by Messrs. Stapleton and Moorer is set out on page 3 of their brief, and that of Bay Minette Land Company immediately follows page 2 of the brief submitted in its behalf. It is to be noted that Messrs. Stapleton and Moorer show credit on their accounting with Bay Minette Land Company of \$200.00 paid July 27th, 1929, and \$100.00 paid May 30th, 1930, and no others. Bay Minette Land Company claims in addition thereto a credit of \$3,000.00 as of June 19th, 1929, \$80.00 as of June 22nd, 1929, \$25.00 as of June 25th, 1930, and \$250.00 as of June 30th, 1930.

I shall deal with the lesser items first.

It is clear that the credits of July 27th, 1929, for \$200.00 and of May 30th, 1930, for \$100.00 must be allowed, as they are included in the accountings submitted by both parties.

I cannot agree that the payment of \$80.00 claimed in the accounting submitted by Bay Minette Land Company as a credit on its mortgage with W. D. Stapleton and Henry D. Moorer as of date June 22nd, 1929, has anything to do with that mortgage. It seems to me too clear for argument this payment was credited on the \$2,000.00 note executed December 8th, 1928, by Hampton D. Ewing. That note is complainant's Exhibit 5-A, and endorsed on its back under the caption "Interest Endorsement" is found the following notation: "6-21-29 - \$80.00: 6-8-1929." I take it this entry means that \$80.00 was paid on June 21st, 1928, this amount paying the interest on this \$2,000.00 note to June 8th, 1929. The complainant's Exhibit 10 is a charge

slip made by the Baldwin County Bank against H. D. Ewing for \$80.00 bearing date of June 22nd, 1929, with a statement to the effect that it is interest on the \$2,000.00 note to Messrs. Stapleton and Moorner from December 8th, 1928, to June 8th, 1929. The endorsement on the back of the note and the charge slip of Baldwin County Bank convince me this item of \$80.00 was intended to be credited against the \$5,000.00 mortgage made by Mr. Ewing personally.

I think it equally clear the three payments of \$1,000.00 each set out by Hampton D. Ewing, Esq., in his account with Messrs. Stapleton and Moorner are correctly shown. On November 7th, 1929, a draft was drawn on Mr. Ewing for \$1,000.00, and it is not disputed this draft was paid. It is also not disputed that payments were made by telegraphic advices on February 15th, 1930, and April 21st, 1930, for \$1,000.00 each. The three payments for \$1,000.00 each herein referred to and the payment of \$80.00 discussed in the immediately preceding paragraph are all of the payments claimed by Mr. Ewing on the \$5,000.00 mortgage made Messrs. Stapleton and Moorner, with the exception of a payment alleged to have been made on March 26th, 1929, for \$238.00. As to this payment, Mr. Moorner admitted that it had been made, but claimed the payment was for an account owed him by Mr. Ewing amounting to \$214.07 for money which Mr. Moorner states he had paid for Mr. Ewing, and the ginning of five bales of cotton at a cost of \$24.03, - the two items amounting to a total of \$238.10 (see transcript of testimony, pp.

141-142). I do not find where Mr. Ewing has said anything to rebut the testimony just referred to, and as I am persuaded Mr. Moorer has testified correctly concerning this transaction I must find it has nothing to do with the mortgage now in question. Mr. Ewing's check is dated March 26th, 1929, and is made payable to Mr. Moorer individually.

It is not disputed that in addition to the payments just discussed \$250.00 was paid June 25th, 1930, and \$25.00 on June 30th, 1930, by Mr. Ewing. In the respondent's brief, these payments totalling \$275.00 are credited against the \$3,000.00 obligation of Mr. Ewing to Messrs. Stapleton and Moorer. In the brief for the complainants, these payments are credited against the \$5,000.00 mortgage made by Bay Minette Land Company to Messrs. Stapleton and Moorer. It is my opinion the greater part of this payment of \$275.00 must be applied against the mortgage for \$3,000.00 made by Mr. Ewing to Messrs. Stapleton and Moorer. Indeed, the note for \$1,000.00 dated December 8th, 1928, and executed by Mr. Ewing and payable to Messrs. Stapleton and Moorer indicates on its back that a payment of \$250.00 was made on June 16th, 1930, leaving a balance due at that time of \$25.00, and this evidence, considered in the light of the testimony of the witnesses, is to my mind conclusive of the fact that these payments were made against the \$3,000.00 obligation. However, it is to be noted from the following statement of the \$3,000.00 obligation that these payments overpaid this mortgage, and the interest on it, by \$68.09,

and, consequently, the amount of \$68.09 must be credited against the \$5,000.00 as of June 25th, 1930. I find that payments were made on the \$3,000.00 obligation of Mr. Ewing to Messrs. Stapleton and Moorers in the manner following:

STATEMENT OF ACCOUNT OF HAMPTON D. EWING, ESQ.,  
WITH MESSRS. STAPLETON AND MOORER.

Principal December 8th, 1928, -----	\$3,000.00
Interest on \$3,000.00 from December 8th, 1928, to June 22nd, 1929 (6 months, 14 days), -----	129.33
Less payment on interest June 22nd, 1929, -----	80.00
Balance interest, ----	49.33
Interest on \$5,000.00 from June 22nd, 1929, to November 7th, 1929 (4 months, 16 days), -----	90.67
	140.00
Principal, -----	3,000.00
	3,140.00
Less payment November 7th, 1929, -----	1,000.00
Balance, -----	2,140.00
Interest on \$2,140.00 from November 7th, 1929, to February 15th, 1930 (3 months, 8 days), ---	46.61
	2,186.61
Less payment February 15th, 1930, -----	1,000.00
	1,186.61
Interest on \$1,186.61 from February 15th, 1930, to April 21st, 1930 (2 months, 6 days), -----	17.40
	1,204.01
Less payment April 21st, 1930, -----	1,000.00
	204.01
Interest from April 21st, 1930, to June 25th, 1930 (2 months, 4 days), -----	2.90
	206.91
Paid in full June 25th, 1930, by payment of, ---	275.00
Overpaid, -----	\$ 68.09

I have gone into the matter of the claim of a credit of \$3,000.00 as of June 19th, 1929, by Bay Minette Land Company against its mortgage made Messrs. Stapleton and Moorers with considerable care. It is claimed by the complainant that a credit for \$3,000.00 should be entered as of June 19th, 1929, in that the Bay Minette Land Company contracted to sell to W. D. Staple-

ton a tract of land covered in the mortgage from Bay Minette Land Company to Stapleton and Moorner for the sum of \$3,000.00. It is to be noted, however, that the contract of purchase provided that this amount of \$3,000.00 was "to be paid in cash upon delivery of deed conveying fee simple title to the said real estate free of all encumbrances and the delivery of proper transfer and assignment for the other rights, etc." It was also provided in the contract, "The purchaser agrees to purchase the above properties under the terms and conditions hereof, same to be consummated upon presentation of proper conveyances and transfers by seller which shall be done within thirty days from this date."

The contract of purchase entered into by Bay Minette Land Company and W. D. Stapleton bears date June 19th, 1929. W. D. Stapleton was to receive the property described therein free of all encumbrances within thirty days from June 19th, 1929. The mortgage given W. D. Stapleton and Henry D. Moorner is dated December 8th, 1928, and matured six months after date. It would therefore appear the contract for the sale of the property by Bay Minette Land Company was made on the assumption the mortgage would be paid before a deed was given W. D. Stapleton by the Land Company.

The mortgage has never been paid and Bay Minette Land Company is in no better position now to carry out its agreement with W. D. Stapleton than it was thirty days after the date of the agreement of sale and purchase. Therefore I find that

Bay Minette Land Company may not at this time insist on W. D. Stapleton carrying out the agreement to purchase. No deed was ever tendered W. D. Stapleton until November 6th, 1930,- the day set for the hearing before the Special Master. That tender was refused, Mr. Stapleton or his counsel saying, in effect, that the complainant had failed to live up to the terms of its agreement.

I find that Bay Minette Land Company has not so complied with its contract with W. D. Stapleton as to be entitled to any credit on account thereof upon the indebtedness secured by its said mortgage and that the entire property included in the mortgage is bound for the whole debt secured by the mortgage. Ehrman vs. Alabama Mineral Land Company, 109 Ala. 478, 20 So. 112.

The mortgage indebtedness as it will be as of March 1st, 1931, is, therefore, stated as follows:

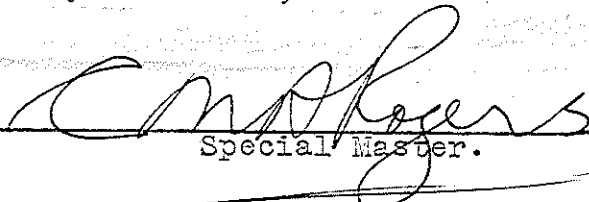
Principal December 8th, 1928, -----	\$5,000.00
Interest from December 8th, 1928, to July 27th, 1929 (7 months, 19 days), -----	254.44
Less payment on interest July 27th, 1929, -----	200.00
Balance interest, -----	54.44
Interest on \$5,000.00 from July 27th, 1929, to May 30th, 1930 (10 months, 3 days), -----	336.67
Interest to May 30th, 1930, -----	391.11
Less payment on May 30th, 1930, -----	100.00
Balance interest, -----	291.11
Interest on \$5,000.00 from May 30th, 1930, to June 25th, 1930 (26 days), -----	28.89
Less payment on June 25th, 1930, -----	320.00
Balance interest, -----	68.09
Interest on \$5,000.00 from June 25th, 1930, to March 1st, 1931 (8 months, 3 days), -----	270.00
Principal, -----	521.91
	5,000.00
	<u>\$5,521.91</u>

I find that the mortgagors are also entitled to a reasonable attorney's fee for foreclosing the mortgage, and I find from the evidence that the amount of such fee will be \$550.00.

I further find and report that the total amount to be paid by Bay Minette Land Company in order to redeem the property from the mortgage is \$6,071.91 as of March 1st, 1931, plus such costs of this cause, if any, as may be taxed by the Court against the complainant, Bay Minette Land Company.

The reference was in session November 6th, 14th, and 18th, 1930, and I devoted several additional days to an examination and study of the testimony, to briefs of counsel and the authorities. I suggest an allowance of \$250.00 to me for my services as Special Master, but submit that matter to the Court with an assurance that the Court's views with respect to said compensation will be cheerfully accepted.

Respectfully submitted,

  
Special Master.

BAY MINETTE LAND COMPANY,  
Complainant,

-VS-

W. D. STAPLETON AND HENRY D.  
MOORER,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

On motion of the complainant and by agreement between the solicitors of record of the complainant and the respondents, in the above entitled cause,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the said cause be referred to C. M. A. Rogers as Special Master to hold a reference and to ascertain and report to this Court the amount that the complainant, Bay Minette Land Company should, in equity and good conscience be required to pay to Henry D. Moorer and/or W. D. Stapleton in order to redeem the property described in the original bill of complaint from the mortgage therein referred to and described, the said Special Master to report his findings together with the evidence taken before him at said reference as promptly as practicable to this Court.

Dated this 4<sup>th</sup> day of November, 1930.

J. W. Kare  
JUDGE.



Ex 7

~~Compt 7~~

HENRY D. MOORER  
ATTORNEY AT LAW  
BAY MINETTE, ALA.

September 2nd, 1930.

AIR MAIL:

The Bay Minette Land Company,  
160 Broadway  
New York, N. Y.

Gentlemen: Attention Hon. H. D. Ewing.

The Bank in Mobile refuses to carry the note longer and I am forced to take steps to collect same at once.

If it is your wish, I will gladly prepare transfer from Judge Stapleton and myself to any one you may designate as some disposition must be made by October 1st, as the bank told us they would not carry it longer than this date.

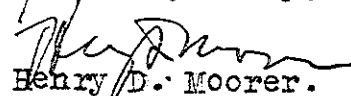
The property will be advertised for sale at once and I will gladly stop the advertisement at any time you may wish provided arrangements are made to take care of the indebtedness. In addition to the \$5420. there will be attorney's fee in the sum of 15% plus the costs of advertising attached, but if arrangements are made for payment before September 20th, you may disregard the attorney's fee for I do not care to burden Mr. Ewing under the present condition, but as stated I am forced to take steps at once.

The sale will be advertised for September 27th and I certainly hope that some disposition will be made before the sale. The property is worth several times the amount of indebtedness. It is not a question of the security, but it is a question of being able to meet the Banks requirement.

Will appreciate you advising me what to expect by return mail.

I am,

Yours very truly,

  
Henry D. Moorers.

HDM/ME  
CC/ to Deephaven Camp,  
Ashland, New Hampshire.

Ex 9

HENRY D. MOORER  
ATTORNEY AT LAW  
BAY MINETTE, ALA.

July 3rd, 1930.

Compt. 9

Hon. H. D. Ewing,  
Bay Minette, Alabama.

Dear Mr. Ewing:

+  
Herein I enclose statement given you on March 12th, 1929, showing a balance due of \$438.10. You will notice that you were given credit for the \$238.00 on March 27th, 1929, leaving a balance of \$200.10. Since then I have paid out \$400.00 and by deducting the check for \$200.00, leaves a balance of \$400.10 due for interest, and I paid \$500.00 on the principal, leaving a balance due me of \$900.00

I am giving you the copy as prepared by Miss Gladys Bush, who was in my office at the time and will appreciate you returning same to me after looking it over.

+  
You will see that there is one years' interest due on this paper which was \$400.00 and that you paid \$100.00 in June which paid the interest up to September 3rd, the next due date.

There was a considerable expense attached to this matter in the way of telephone calls and telegrams to you, which I have not added, as well as, numerous trips to Mobile. I will get a statement up as to the telegrams and telephone calls and think that you should pay these, but I am willing to leave off the expense of the trips to Mobile.

Hoping that this convinces you as to the account, I am,

Yours very truly,

Henry D. Moor. over.  
Henry D. Moor. over.

HDM/MH  
Enc:

Ex 3e

BAY MINETTE LAND COMPANY,  
a corporation.  
Complainant.

IN THE CIRCUIT COURT-EQUITY S

STATE OF ALABAMA

-vs-

BALDWIN COUNTY.

W. D. STAPLETON and H. D.  
MOORER. Respondents.

STATEMENT OF ACCOUNT BETWEEN PARTIES.  
ON HEARING BEFORE HON. C. M. A. ROGERS,  
MASTER.

BAY MINETTE LAND COMPANY  
Bay Minette, Alabama.

November 6th., 1930.

DR.

-to-

W. D. STAPLETON and H. D. MOORER.  
Bay Minette, Alabama.

Dec. 8, 1928. Principal amount of loan evidenced by note and secured by mortgage de- scribed in Bill of Complaint.....	\$ 5,000
Int. at 8% from 12/8/28 to 7/27/29.....	254
Total principal and interest July 27th., 1929	5 254
Credit by payment July 27th., 1929	200
Balance due July 27th., 1929	5 054
Interest on balance from 7/27/29 to 5/30/30	340
Total balance principal and interest May 30, 1930	5 394
Credits by payment May 30th., 1930	100
Balance due May 30th., 1930	5 294
Interest on balance from 5/30/30 to 11/6/30	183
Balance principal and interest November 6th., 1930	5 478
Attorneys fees as provided in Mortgage and note	573
Total principal, interest and attys fees	6 051
Advertising costs Baldwin Times	8
Total due this date	\$ 6 060

STATE OF ALABAMA.  
COUNTY OF MOBILE.

Before me, the undersigned authority in and for said county in  
said state personally appeared Henry D. Moorner who is known to me and  
who, after being by me first duly sworn doth depose and say under oath

That his name is Henry D. Moorner; that he is one of the parties  
respondent in the above styled cause; that he has full knowledge of  
the foregoing account between Bay Minette Land Company, the Complainant  
and W. D. Stapleton and H. D. Moorner, the Respondents and that the same  
is true and correct; that after allowing all just credits there  
remains now due and unpaid thereon and thereunder the said above  
stated sum of \$6060.57

Sworn to and subscribed before  
me this November 6th., 1930.

*[Signature]*  
Notary Public, Mobile County, Ala.

*[Signature]*  
Respondent  
"E"

Ex 19  
January 19th, 1930

Gen. Thomas L. Wingo,  
160 Broadway,  
New York City

Dear Tom:-

I have been to Pensacola and could not do anything with respect to that sale of timber. I have an appointment in Athens Monday to sell the turpentene rights on two sections. When in Pensacola I took up the question of making several loans of \$5000.00 each that a Lee Daniel there is recommended to me as one who secures such loans. He says there has been no market for such loans for a long while but he sees a change and will take up the matter for me and let me know within a week. In the meantime, Ray's \$4000.00 payment is to be met. He will not extend it at all. I do not see any way to meet it except through you and I presume you have no way except to ask Tom to make an advance. I am obliged to send him checks today and they will be in New York on Thursday or Friday. I enclose a statement of how the Ray mortgage stands and the prospects of realizing on the timber covered by it.

Now, I have been forced to give Henry Hooker a check for \$1000.00 which will be due at the Westchester Bank on Tuesday or Wednesday, probably Tuesday and a check for \$400.00. I could not avoid either of these things. If I succeed in making the \$1500.00 I may get in as much as \$1500.00. It is I shall try to telegraph that amount in time, but I may not be able to do it. It is more important for me to pay it than the \$1000.00 check arriving later, but the latter is extremely important.

The survey on the \$1100.00 sale should be completed tomorrow. The surveyor has begun. Payment will be made in a very few days. They have to send to Georgia for the check and the exact amount is determined by the survey. There are other sales that I have under way here for Ray Ninette, but they are moving, Oh, so slow.

I have executed the paper to you and sent it off to Maria for her execution and delivery to you. The loss of my pocket book at Quinns so distracted me and took such time in the effort to arrange to recover it that I did not get the paper signed before leaving New York. You cannot appreciate how difficult it is with so much work in the woods for me to get office work done here. I am taking all Sunday morning to prepare this.

Affectionately,

Compt. 19

January 20th, 1930.

Hon. H. D. Ewing

Dr.

Henry D. Moorer.

Amount due Stapleton & Moorer-----	\$5000.00.
Interest <del>to 5/28/29</del> -----	240.00.
	<u>3240.00.</u>
 Paid by Henry D. Moorer-----	 \$2000.00.
" " "-----Interest-----	\$ 240.00.
	<u>2240.00.</u>
 Paid by H. D. Ewing to H. D. Moorer-----	 \$1000.00.
" " "-----	1000.00.
	<u>2000.00</u>
 Balance due Stapleton & Moorer-----	 \$1000.00.
Balance " Henry D. Moorer-----	240.00.

This is a statement of the \$3000.00 mortgage.

Compt 12

Ex 14

HENRY D. MOORER  
ATTORNEY AT LAW  
BAY MINETTE, ALA.

June 13th, 1930.

Hon. H. D. Ewing,  
Bay Minette, Alabama.

Dear Mr. Ewing:-

Herein I enclose note dated December 8th, 1928,  
in the sum of \$2000.00, which you have paid.

I am,

Yours very truly,

*Henry D. Moorer*  
Henry D. Moorer.

HDM/MH  
Enc:

Correct Ex 14

Ex 15

pd - mmm  
5/31/10

December 13th, 1929.

Account of Hon. H. D. Ewing,

Bay Minette, Alabama.

pd.	BY H. D. Moorer to Merchants Bank	\$2000.00.
pd	" " Mobile National Bank	500.00.
pd	" " Int. Mobile National Bank	300.00.
pd	" " Baldwin County Bank and Merchants	240.00.
pd	" " on \$3000.00 mtg	\$3040.00.

pd. BY H. D. Ewing	1000.00.
Balance due H. D. Moorer	\$2040.00.

One note in the sum of \$1000.00 part of \$3000.00 is still at Baldwin County Bank and not included in the above.  
\$500.00 paid to Mobile National reduced the \$5000.00 to \$4500.00.

3/17  
I owe him \$10.00 in  
all. the above is much  
mixed  
H.D.E.

Compt. Sec. 15  
#15

Ex 16

Account of Hon. H. D. Ewing,  
Bay Minette, Alabama.

Due H. D. Moorer Dec. 13, 1929 as per statement	\$2040.00
Paid interest March 3, 1930	<u>100.00</u>
Total.....	\$2140.00
Received \$1,000.00	<u>1000.00</u>
	\$1140.00

Received \$1,000.00 applied as follows:  
\$725.00 on Note of \$1,000.00 held by Baldwin County  
Bank, and  
275.00 to H. D. Moorer, interest paid by him on  
\$3,000.00 mortgage.

Due H. D. Moorer, May 29th, 1930	1140.00
Less payment of \$275.00	<u>275.00</u>
	\$865.00
\$100.00 to be paid out June 2nd Monday	<u>100.00</u>
	\$ 965.00
If Chason purchase of \$400.00 is applied	<u>400.00</u>
Amount due me. . . . .	\$565.00

Correct Ex 16



2417  
HENRY D. MOORER  
ATTORNEY AT LAW  
BAY MINETTE, ALA.

June 13th, 1930.

Hon. H. D. Ewing,  
Bay Minette, Alabama.

Dear Mr. Ewing:

I am in receipt of notice from the Bank stating  
that the note with a balance of \$275.00 due, will  
come due on June 17th,.

I will appreciate you arranging to take care of  
the payment on that date. Paid

Yours very truly,

Henry D. Moor. *Henry D. Moor.*  
Henry D. Moor. *Henry D. Moor.*

HDM/ME

Comptroller 17

TO THE HONORABLE FRANCIS W. HARE,  
JUDGE OF THE TWENTY-FIRST JUDICIAL CIRCUIT  
OF THE STATE OF ALABAMA. SITTING IN EQUITY.

Now comes Bay Minette Land Company, a corporation, organized under the laws of the State of Alabama, and having its principal place of business in Bay Minette, Alabama, and brings this its bill of complaint against W. D. Stapleton and Henry D. Moorner, both of whom are over the age of twenty-one (21) years and reside at Bay Minette, in Baldwin County, Alabama, and respectfully shows unto Your Honor, as follows:-

1. That on, to-wit, the 8th day of December, 1928, complainant, Bay Minette Land Company, executed a mortgage, recorded in Mortgage Book 44 at page 445 of the Probate Records of Baldwin County, Alabama, to respondents, W. D. Stapleton and Henry D. Moorner, to secure an indebtedness of Five Thousand and no/100 (\$5,000.00) Dollars, upon the following described lands owned by it in Baldwin County, Alabama, namely:-

All that certain tract of land as described in a certain plat by D. F. Albin and known as the Fort Morgan Addition to the Town of Bay Minette, said plat is recorded in the office of the Judge of Probate of Baldwin County, Map Book No. One, page 120, said lands being in Baldwin County, Alabama, in the Northeast quarter of Section Sixteen (16), Township Two (2) South of Range Three (3) East.

2. Your orator further shows unto the Court that the maturity of said indebtedness so secured by said mortgage was postponed or extended from time to time until Septem-



plainant's said lands above described under the power of sale contained in said mortgage on September 27, 1930, a copy of which said notice is hereto attached, marked Exhibit "A", and by reference made a part hereof, and complainant avers that they will do so unless they are restrained by an injunction of this Court pendente lite from carrying out their said purpose.

5. Your orator avers that the lands covered by said mortgage and not released therefrom, are worth many times the amount of the original debt secured thereby, and will bring at foreclosure sale much more than enough to pay the original debt secured thereby, and many times as much as the amount actually due on said mortgage on an equitable and true accounting between your orator and respondents, but that such a sale will nevertheless bring greatly less than the property is worth.

6. Your orator further avers that although it is ready, willing and able to pay the full amount in fact due on the indebtedness secured by said mortgage, the respondents wrongfully refuse to admit the aforesaid credits and by giving notice of foreclosure under the power of sale in said mortgage contained are attempting to force complainant to pay not the amount actually due, but an amount greatly in excess thereof, and complainant avers that respondents are not attempting to exercise said power of sale in good faith for the purpose of collecting what is justly due to them, but are attempting to coerce complainant into paying more than it should in equity and good conscience pay on penalty of having its property sold at foreclosure at a price greatly less than its true value, thereby also clouding complainant's title thereto and involving complainant in litigation with the purchaser to establish the true amount of the debt due under said mortgage, although complainant has always been ready, willing and able to pay the amount found to be justly due by it.

7. Your orator avers that if it be mistaken as to the aforesaid purpose of respondents to coerce it into paying more than is due, the fact nevertheless is that your orator claims in good faith to have made the payments hereinabove referred to on said mortgage, and avers that there is a dispute which is a bona fide dispute so far as your orator is concerned, as to the amount actually due on the debt secured by said mortgage, and that an accounting is necessary to determine whether the complainant is right or whether the respondents are right in said dispute and to ascertain and determine the amount due on said mortgage debt and the amount which complainant should in equity and good conscience pay to the respondents in order to redeem its said lands from said mortgage under its equity of redemption.

And your orator now submits itself to the jurisdiction of this Honorable Court and does hereby offer to pay such amount as may be ascertained in equity and good conscience to be due by it as a condition to redeeming its said lands from said mortgage, and otherwise offers to do full equity in the premises.

PRAYER FOR PROCESS.

And your orator respectfully prays this Honorable Court that the aforesaid W. D. Stapleton and Henry D. Moorner be made parties respondent to this your orator's bill of complaint, and that due process of subpoena issue to and be served upon them in accordance with the course and practice of this Honorable Court.

PRAYER FOR RELIEF.

And your orator further prays that an injunction pendente lite be issued to the said W. D. Stapleton and Henry D. Moorner, pending this suit enjoining them from selling or undertaking to sell the above described lands or any part or parcel thereof

under the power of sale contained in said mortgage on the 27th day of September, 1930, or on any other date pending this cause of action, and your orator further prays that this Honorable Court will ascertain and decree the amount which your orator should in equity and good conscience pay to the respondents in order to redeem its said property from the aforesaid mortgage, and will fix a time within which the same may be paid and will decree that on the payment thereof said mortgage be annulled and cancelled; and your orator prays for such other and further relief as it may be entitled to receive, the premises considered

*Jesse F. Hogan*  
*Harry J. Smith Caffey*  
Solicitors for Complainant.

FOOT NOTE:

The respondents are required to answer each and every allegation of the above and foregoing bill of complaint from paragraph First to paragraph Seventh, both inclusive, but not under oath, oath as to such answers being hereby expressly waived.

*Jesse F. Hogan*  
*Harry J. Smith Caffey*  
Solicitors for Complainant.

*We accept service of the foregoing bill of complaint and waive further notice thereof. Dated 9/23/30.*

*Robert H. Hines*  
Attorney for Respondent  
*Henry D. Brown & D. Stogdole*

NOTICE OF MORTGAGE FORECLOSURE.

Default having been made in payment of the indebtedness evidenced by that certain note described in and secured by that certain mortgage executed by the Bay Minette Land Company to W. D. Stapleton and Henry D. Moorner, dated December 8th, 1928 and recorded in Mortgage Book 44, at page 445 in the Probate Records of Baldwin County, Alabama; which default still continues, notice is hereby given that the undersigned mortgagees will sell at auction to the highest bidder for cash during the legal hours of sale on September 27th, 1930, in front of the Court House at Bay Minette, Baldwin County, Alabama, the following described property to-wit:-

All that certain tract of land as described in a certain plat by D. F. Albin and known as the Fort Morgan Addition to the Town of Bay Minette, said plat is recorded in the office of the Judge of Probate of Baldwin County, Map Book No. One, Page 120, said lands being in Baldwin County, Alabama in the Northeast quarter of Section Sixteen (16) Township Two (2) South of Range Three (3) East.

The said sale is made under the terms of the said mortgage and by virtue of the power of sale contained therein. The proceeds of said sale will be applied as provided in and by said mortgage.

W. D. Stapleton  
Henry D. Moorner  
Mortgagees.

Henry D. Moorner, Att'y.

STATE OF ALABAMA,  
COUNTY OF MOBILE.

Personally appeared before me, the undersigned authority, William G. Caffey, who, upon oath, deposes and says that he is one of the solicitors for the complainant in the above entitled cause; that Hampton D. Ewing is the only officer, agent or employee of the complainant corporation having knowledge of the facts alleged in the above and foregoing bill of complaint; that he is now in Ashland, New Hampshire, recovering from an operation for appendicitis and that it has been impossible for the solicitors for the complainant to ascertain the facts, prepare the bill of complaint and send it to New Hampshire for verification and return by the said Hampton D. Ewing in time to file the same and to get a hearing on the right to a temporary injunction, prior to September 27th, 1930, when the sale, under the power in the mortgage referred to in said bill, is advertised to be held.

Affiant further deposes and says that he is informed and believes and on such information and belief states, that the facts alleged in the above and foregoing bill of complaint are true as alleged.

William G. Caffey

Subscribed and sworn to before me  
this the 23 day of September, 1930.

James E. Curry  
Notary Public, Mobile County, Alabama.

*[Faint, illegible handwritten notes and signatures at the bottom of the page.]*



STATE OF ALABAMA  
COUNTY OF MOBILE.

Personally appeared before me, the undersigned  
authority, William G. Colley, who, upon oath, deposes and says

*Given and Subscribed  
at Mobile, Alabama  
this 23rd day of Sept 1920*

RECORDED

When complainant entering into bond  
conditioned and payable as required by law  
with good and sufficient surety and in  
the sum of Seven Hundred and Fifty  
Dollars (\$750.00) the Register will issue  
temporary writ of injunction as prayed  
for in the bill - This Sept, 25, 1920.  
D. W. Hare  
Judge

BAY MINETTE LAND COMPANY,  
Complainant.  
versus.  
W. D. STAPLETON AND HENRY D.  
MOORER,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

STATE OF ALABAMA )  
COUNTY OF MOBILE )

KNOW ALL MEN BY THESE PRESENTS, that whereas the Circuit Court of Baldwin County, Alabama, sitting in Equity, did, on the 24th day of April, 1931, render a judgment for W. D. Stapleton and Henry D. Moorner against the Bay Minette Land Company, in the above entitled cause, for the sum of \$6136.71, and did also decree the dissolution of the temporary injunction heretofore issued to restrain the defendants from foreclosing the mortgage which is the subject matter of this suit and the sale of the property and the foreclosure of the mortgage; and,

WHEREAS, the above bounden Bay Minette Land Company has appealed from the said decree and given bond to supersede the monetary judgment and now desires also to supersede the dissolution of said injunction and the decree for the foreclosure and sale of said property; and,

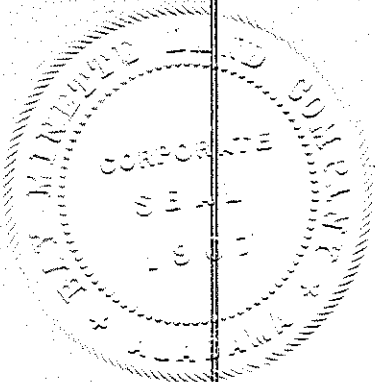
WHEREAS, the presiding judge of the said Circuit Court has fixed the bond for the supersedeas of the said decree as to the dissolution of said injunction and the sale of said property at Two Hundred (\$200.00) Dollars:

NOW, THEREFORE, in consideration of the premises, the Bay Minette Land Company, as principal, and NATIONAL SURETY COMPANY, as surety, are held and firmly bound unto the Register in Chancery in the full sum of Two Hundred (\$200.00) Dollars, for the payment of which, well and truly to be made, we

bind ourselves, our successors and assigns.

The conditions of the above obligation are, however, such that should Bay Minette Land Company pay all such costs and damages as any party aggrieved may sustain by reason of the wrongful appeal and suspension of the execution of said decree, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

Made this the 19th day of June, 1931.



BAY MINETTE LAND COMPANY,

BY

*Hampton S. Lewis*  
*Purt*

NATIONAL SURETY COMPANY,

BY:

*W. H. Smith*  
Vice President.



Attest:

*W. H. Smith*  
Resident Assistant Secretary.

STATE OF **NEW YORK.**  
COUNTY OF **NEW YORK:** } ss.:

On this 19th day of June, 1931, before me personally appeared Arthur P. West  
~~Resident Vice-President~~ of the NATIONAL SURETY COMPANY with whom I am personally acquainted, who, being by me duly sworn, says that he resides in the County of New York; that he is the ~~Resident Vice-President~~ of the NATIONAL SURETY COMPANY, the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said Company, and that he signed said instrument as ~~Resident Vice-President~~ of said Company by like order. And said Arthur P. West  
further said that he is acquainted with N. V. Tynan and knows him to be the Resident Assistant Secretary of said Company; that the signature of the said N. V. Tynan subscribed to the said instrument is in the genuine handwriting of the said N. V. Tynan and that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 33 of the Laws of the State of New York for the year 1909 constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law, as amended by Chapter 182 of the Laws of the State of New York for the year 1913, issued to the National Surety Company his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that such certificate has not been revoked.

*Anthony D. Blatner*  
ANTHONY D. BLATNER

### COPY OF BY-LAW.

BE IT REMEMBERED: That at a special meeting of the Board of Directors of the NATIONAL SURETY COMPANY, duly called and held on the third day of October, 1922, a quorum being present, the following By-Law was adopted:

#### ARTICLE XIII.

#### EXECUTION OF BONDS AND UNDERTAKINGS.

SECTION 1. *Signatures Required.*—All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof, shall be signed by the Chairman, Vice-Chairman, President, a Vice-President, a Resident Vice-President, or Attorney-in-Fact and shall have the seal of the Company affixed thereto, duly attested by the Secretary, an Assistant Secretary or Resident Assistant Secretary. All Vice-Presidents and Resident Vice-Presidents shall each have authority to sign such instruments, whether the President be absent or incapacitated, or not, and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated, or not; and the Attorneys-in-Fact shall each have authority, in the discretion of such Attorneys-in-Fact, to affix to such instruments an impression of the Company's seal whether the Secretary be absent or incapacitated, or not, or to attach the individual seal of the Attorney-in-Fact thereto, or to use the scroll of the Attorney-in-Fact, or a wafer, wax, or other similar adhesive substance affixed thereto, or a seal of paper or other similar substance affixed thereto by mucilage or other adhesive substance, or use the word "SEAL" or the letters "L. S." opposite the signature of such Attorneys-in-Fact, as the case may be.

STATE OF NEW YORK,  
COUNTY OF NEW YORK, } ss.:  
N. V. Tynan

I, N. V. Tynan, Resident Assistant Secretary of the NATIONAL SURETY COMPANY, have compared the foregoing By-Laws with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of Article XIII, Section 1 of said original By-Law.

Given under hand and seal of the Company, in the  
County of New York, this 19th  
day of June, 1931.

*[Signature]*  
Resident Assistant Secretary.

BAY MINETTE LAND COMPANY,  
a corporation,

Complainant.

versus

W. D. STAPLETON and  
HENRY D. MOORER,

Defendants.

CIRCUIT COURT OF BALDWIN  
COUNTY.

IN EQUITY.

Now comes the complainant and brings in its account of the matters and things involved in this litigation in the form of debtor and creditor, verified by affidavit, and which is as follows:

"BAY MINETTE LAND COMPANY

IN ACCOUNT WITH

W. D. STAPLETON AND HENRY D. MOORER.

DR.

CR.

Dec. 8, 1928 - Original mortgage indebtedness described in the original bill of complaint..... \$5000.00

Mch. 26, 1929 - Paid on account.....

238.00

June 19, 1929 - Purchase money of certain lands purchased by W. D. Stapleton from Bay Minette Land Company, with the understanding that the purchase price was to be credited upon said mortgage.....

3000.00

Jan. 22, 1929 - Paid on account.....

80.00

July 27, 1929 - Paid on account.....

200.00

Nov. 7, 1929 - Paid to Henry D. Moorner by draft on Hampton D. Ewing, 160 Broadway, New York, N. Y.....

1000.00

Jan. 10, 1930 - Paid on account.....

400.00

Feb. 15, 1930 - Paid on account.....

1000.00

Apr. 21, 1930 - Paid on account.....

1000.00

May 30, 1930 - Paid on account.....

100.00

June 25, 1930 - Paid on account.....

25.00

June 30, 1930 - Paid on account.....

250.00

5000.00

8293.00

Count Ex # 23

It is impossible for the complainant to state the exact balance due upon this account for the following reasons:

Hampton D. Ewing, who is the President of the Bay Minette Land Company, became indebted to the defendants in the sum of Three Thousand (\$3,000.00) Dollars, for which he executed his two (2) promissory notes,- one for \$1000.00 and one for \$2,000.00, dated December 8th, 1928, payable to the defendants, W. D. Stapleton and Henry D. Moorer, six months after date, and bearing interest at the rate of eight per cent per annum. Thereafter he made the payments above set forth, on behalf of himself and the Bay Minette Land Company, but he does not know to which of the said indebtednesses the defendants applied certain of the said payments, if any such applications were made. The defendants, however, returned to the said Hampton D. Ewing as paid both of the said promissory notes of Hampton D. Ewing, for the reason they had applied sufficient of said payments to the said notes to represent the payment thereof, so that the balance of the said payments must be applied to the mortgage indebtednesses here in litigation, but it is impossible for the complainant to designate which of the said payments were applied to the individual indebtednesses, and which of them were applied to the corporate indebtednesses of the complainant, so as to make the necessary calculations of interest without further information as to how the defendants applied the several payments, if any such application was made. If no application of said payments were so made, however, this complainant now elects to apply any portions of said payments which were not applied to the said notes of the said Hampton D. Ewing to the payment of the mortgage which is the subject matter of this litigation.

BAY MINETTE LAND COMPANY,

By Hampton D. Ewing  
President.

Harry Smith Hays

SOLICITORS FOR COMPLAINANT.

STATE OF ALABAMA :

COUNTY OF MOBILE :

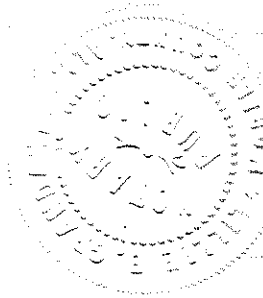
Personally appeared before me, Lillie B. Grandahl, a Notary Public in and for said State and County, Hampton D. Ewing, who, upon oath, deposes and says that he is the President of the Bay Minette Land Company and as such is qualified to make this affidavit, and that the foregoing statement of the account between the complainant and the defendants is true and correct according to the best of his knowledge, information and belief.

.....*Hampton D. Ewing*.....

Subscribed and sworn to before me  
this the 3rd day of November, 1930.

.....*Lillie B. Grandahl*.....

NOTARY PUBLIC, MOBILE COUNTY, ALABAMA.



**THE STATE OF ALABAMA,**  
Baldwin County.

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of  
**One dollar**

to **me** in hand paid by **James M. Reid**

the receipt whereof is hereby acknowledged **J. M. Northcutt and Julia Northcutt,**  
**his wife**

do grant, bargain, sell and convey unto the said

**James M. Reid**

the following described lands situated in **Baldwin C** County, Alabama, to-wit:

**Lot 17, Block 2, Northcutt's Subdivision,**

**Bay Minette, Ala. .**

TO HAVE AND TO HOLD to the said **James M. Reid**

**His** heirs and assigns forever.

And **they** do covenant with the said **James M. Reid**

that **they are** seized in fee of the above

described premises; that **they** have the right to sell and convey the same; that the said

premises are free from all incumbrances: and that **they** will, and **their** heirs,

executors, and administrators shall forever **WARRANT AND DEFEND** the same to the said

**James M. Reid**

heirs and assigns, against the lawful claims of all persons whomsoever.

Witness **my** hand and seal this **4th.** day of **November** 19**33**

WITNESS:

*J M Northcutt* L. S.  
*Julia Northcutt* L. S.  
L. S.



State of Alabama, Macon County.

I, Roy J. Akin, a Notary Public

in and for said County and State, hereby certify that J. M. Northcutt

whose name is signed to the foregoing conveyance, and who

is known to me, acknowledged before me on this day that being informed of the contents

of the conveyance he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 17 day of Oct A. D. 1935

Roy J. Akin  
Notary Public

State of Alabama, Macon County.

I, Roy J. Akin, a Notary Public

in and for said County and State, do hereby certify that on the 17 day of Oct. 1935

came before me the within named Julia Northcutt

known to me to be the wife of the within named J. M. Northcutt

who being examined separate and apart from her husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of the husband.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 17 day of

October 1935,

Roy J. Akin  
Notary Public

# Warranty Deed

FROM

J. M. Northcutt & wife

59

TO

James M. Reid

11/4/33

STATE OF ALABAMA,

MACON COUNTY.  
JUDGE OF PROBATE.  
I hereby certify that the within Deed was  
filed in my office for record on the 17 day  
of October A. D., 1935  
M., and duly re-  
corded in Book No. 1140 of Mortgages, page  
and examined.  
Witness my hand and the seal of my office this  
17th day of October, 1935.  
Notary Public

Judge of Probate

MOORE PRINTING CO., BAY MINETTE, ALA.

11/4/33  
James M. Reid  
11/4/33

BAY MINETTE LAND COMPANY,  
Complainant.

versus.

W. D. STAPLETON AND HENRY  
D. MOORER,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

STATE OF ALABAMA, )  
BALDWIN COUNTY. )

KNOW ALL MEN BY THESE PRESENTS that whereas the Circuit Court of Baldwin County, Alabama, sitting in equity, did on the 24th day of April, 1931, render a judgment for W. D. Stapleton and Henry D. Moorner against the Bay Minette Land Company in the above entitled cause, for the sum of \$6136.71, and ordered the issuance of execution for the collection of the same, from which said judgment the Bay Minette Land Company has appealed and desires to supersede the execution of said judgment;

NOW, THEREFORE, the Bay Minette Land Company, as principal, and NATIONAL SURETY COMPANY, as surety, are held and firmly bound unto W. D. Stapleton and Henry D. Moorner in the full sum of \$12273.42, for the payment of which well and truly to be made, we bind ourselves, our successors and assigns forever.

The conditions of the above obligation are, however, such that should the said Bay Minette Land Company prosecute to effect the appeal of the Bay Minette Land Company from the decree of the Circuit Court of Baldwin County, Alabama, which was rendered on the 24th day of April, 1931, or if it fails therein pay such judgment as the Supreme Court of Alabama may render in

the premises, then this obligation should become null and void, otherwise, the same is to be and remain in full force and effect.

Made this the 19th day of June, 1931.

BAY MINETTE LAND COMPANY

BY

Hampton D. Ewing  
HAMPTON D. EWING, President

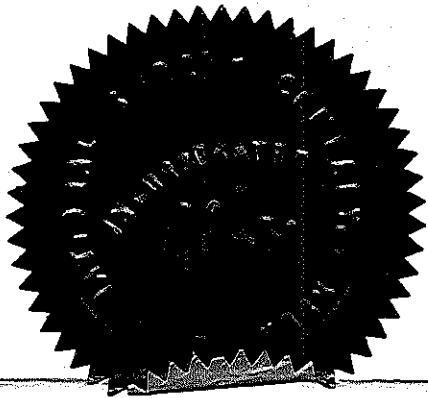
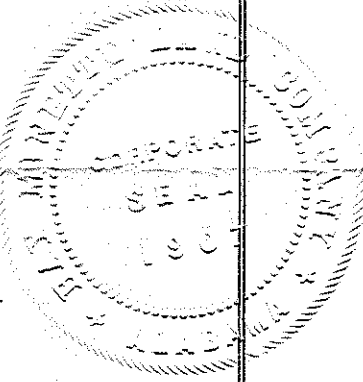
NATIONAL SURETY COMPANY,

BY:

W. H. H. H. H.  
Vice President.

Attest:

W. H. H. H. H.  
Resident Assistant Secretary.



STATE OF NEW YORK.  
COUNTY OF NEW YORK.

} ss.:

On this 19th day of June, 1931, before me personally

appeared Arthur P. West

~~Resident~~ Vice-President of the NATIONAL SURETY COMPANY with whom I am personally acquainted, who, being by

me duly sworn, says that he resides in the County of New York; that he is the ~~Resident~~ Vice-President of the NATIONAL SURETY COMPANY, the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said Company, and that he signed said instrument as ~~Resident~~ Vice-President

of said Company by like order. And said Arthur P. West

further said that he is acquainted with N.V. Tynan and knows him to be the

Resident Assistant Secretary of said Company; that the signature of the said N.V. Tynan

subscribed to the said instrument is in the genuine handwriting of the said N.V. Tynan and that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 33 of the Laws of the State of New York for the year 1909 constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law, as amended by Chapter 182 of the Laws of the State of New York for the year 1913, issued to the National Surety Company his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that such certificate has not been revoked.

*Arthur P. West*  
Notary Public, Kings Co. No. 31, Exp. No. 2001  
Cert. filed N.Y. Co. No. 56, Exp. No. 2001  
Commission expires March 30, 1935

### COPY OF BY-LAW.

BE IT REMEMBERED: That at a special meeting of the Board of Directors of the NATIONAL SURETY COMPANY, duly called and held on the third day of October, 1922, a quorum being present, the following By-Law was adopted:

#### ARTICLE XIII.

#### EXECUTION OF BONDS AND UNDERTAKINGS.

SECTION 1. *Signatures Required.*—All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof, shall be signed by the Chairman, Vice-Chairman, President, a Vice-President, a Resident Vice-President, or Attorney-in-Fact and shall have the seal of the Company affixed thereto, duly attested by the Secretary, an Assistant Secretary or Resident Assistant Secretary. All Vice-Presidents and Resident Vice-Presidents shall each have authority to sign such instruments, whether the President be absent or incapacitated, or not, and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated, or not; and the Attorneys-in-Fact shall each have authority, in the discretion of such Attorneys-in-Fact, to affix to such instruments an impression of the Company's seal whether the Secretary be absent or incapacitated, or not, or to attach the individual seal of the Attorney-in-Fact thereto, or to use the scroll of the Attorney-in-Fact, or a wafer, wax, or other similar adhesive substance affixed thereto, or a seal of paper or other similar substance affixed thereto by mucilage or other adhesive substance, or use the word "SEAL" or the letters "L. S." opposite the signature of such Attorneys-in-Fact, as the case may be.

STATE OF NEW YORK,

COUNTY OF NEW YORK,

} ss.:

I, N.V. Tynan, Resident Assistant Secretary of the NATIONAL SURETY COMPANY, have compared the foregoing By-Laws with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of Article XIII, Section 1 of said original By-Law.

Given under hand and seal of the Company, in the  
County of New York, this 19th  
day of June, 1931.

*N.V. Tynan*  
Resident Assistant Secretary.

The State of Alabama,  
Baldwin County

CIRCUIT COURT OF BALDWIN COUNTY,  
IN EQUITY

To Any Sheriff of the State of Alabama--GREETING:

WE COMMAND YOU, That you summon W.D. STAPLETON and HENRY D. MOORER,  
and J.T. BRADLEY

of BALDWIN County, to be and appear before the Judge of the Circuit Court  
of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Sum-  
mons, and there to answer, plead or demur, without oath, to <sup>an amended</sup> Bill of Complaint lately exhibited by  
BAY MINETTE LAND COMPANY,

against said W.D. STAPLETON, HENRY D. MOORER & J.T. BRADLEY

and further to do and perform what said Judge shall order and direct in that behalf. And this the  
said Defendant shall in no wise omit, under penalty, etc. And we further command that you return  
this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 18th day of

MARCH 193 2

T. W. Richerson Register.

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

# CIRCUIT COURT, BALDWIN COUNTY, ALA., IN EQUITY.

No. 927

*Baymiller & Co.*  
VS.

*J. N. Stephens & H. D. Johnson*

## Fees of Register

## Bill of Costs

PLAINTIFF  
DEFENDANT

Filing each bill and other papers	\$ 10
Issuing each subpoena	50
Issuing each copy thereof	40
Entering each return thereof	15
For each order of publication	1 00
Issuing writ of injunction	1 50
For each copy thereof	50
Entering each return thereof	15
Issuing writ of attachment	1 00
Entering each return thereof	15
Docketing each case	1 00
Entering each appearance	1 00
Issuing each decree pro confesso on persl ser	25
Each order appointing guardian	1 00
Any other order by Register	1 00
Issuing commission to take testimony	1 00
Receiving and filing	50
Endorsing each package	50
Entering order submitting cause	10
Entering any other order of Court	10
Noting all testimony	50
Abstract of cause, etc.	25
Entering each decree	50
For every 100 words over 500	1 00
Taking account, etc.	75
Taking testimony, etc.	15
Each report, 500 words or less	3 00
For every 100 words over 500	15
Amount claimed less than \$500, etc	2 50
Issuing each subpoena	15
Witness certificate, each	2 00
Issuing execution, each	25
Entering each return	25
Taking and approving bond, each	75
Making copy of bill, etc	15
Each certificate or affidavit, with seal	1 00
Each certificate or affidavit, no seal	15
Hearing and passing on application, etc.	50
Each settlement with receiver, etc.	50
Examining each voucher of receiver, etc	25
Examining each answer, etc.	3 00
Recording resignation, etc.	3 00
Entering each certificate to Supreme Court	10
Taking questions and answers, etc.	3 00
For all other service relating to such proceedings	75
For services in proceeding to relieve minors, etc., same fees as in similar cases.	50
Commission on sales, etc.: 1st \$100, 2 per cent.; all over \$100, and not exceeding 1,000, 1 1-2 per ct.; all over \$1,000, and not exceeding \$20,000, 1 per ct.; all over \$20,000, 1-4 of 1 per ct.	25
	1 00

Dollars Cts.

## Brought Forward

For receiving, keeping and paying out or distributing money, etc.; 1st \$1,000 1 per ct.; all over \$1,000, and not over \$5,000, 3-4 of 1 per ct.; all over \$5,000, and not exceeding \$10,000, 1-2 of 1 per ct.; all over \$10,000, 1-4 of 1 per ct.	15
Receiving, keeping and paying out money paid into court, etc., 1-2 of 1 per ct. of amount received.	25
Each Notice sent by mail to creditors	50
Filing, Receipting for and docketing each claim, etc.	50
For all entries on subpoena docket, etc.	15
For all entries on commission docket, etc.	25
Making final record, per 100 words	50
Certified copy of decree	15
Report of divorce to State Health office Acts 1915	1 00
	50

Total Fees of Register

## Fees of Sheriff

Serving and returning subpoena on deft.	\$ 1 50
Serving and returning subpoena for witness	65
Levying attachment	1 50
Entering and returning same	25
Selling property attached	75
Impanelling Jury	2 50
Executing writ of possession	1 50
Collecting execution for costs	65
Serving and returning sci. fa., each	1 50
Serving and returning notice	65
Serving and returning writ of injunction	1 50
Taking and approving bonds, each	1 50
Collecting money on execution	75
Making deed	2 50
Serving and returning application, etc.	1 00
Serving attachment, contempt of court	1 50

Total Fees of Sheriff

## Recapitulation

Register's Fees	
Sheriff's Fees	
Commissioner's Fees	
Solicitor's Fees	
Witness Fees	
Guardian Ad Litem	
Printer's Fees	
Trial Tax	
Recording Decree in Probate Court	3 00
TOTAL	42 90

Sub Total Carried Forward

Received payment this 10 day of April 1928

(ORIGINAL)

RECORDED

Serve on

Circuit Court of Baldwin County  
In Equity.

No. \_\_\_\_\_

SUMMONS

BAY MINETTE LAND COMPANY,

vs.

W. D. STAPLETON, HENRY D. MOORE,  
ER, and J. T. BRADLEY

HARRY T. SMITH & CAFFEY

Solicitor for Complainant.

Recorded in Vol. \_\_\_\_\_ Page \_\_\_\_\_

346  
87716

The State of Alabama,  
BALDWIN COUNTY.

Received in office this \_\_\_\_\_

day of \_\_\_\_\_ 193 \_\_\_\_\_

Sheriff.

Executed this \_\_\_\_\_ day of

March 18th 1932

by leaving a copy of the within Summons with

W. D. Moore

Defendant.

W. D. Stapleton

Sheriff.

By \_\_\_\_\_

Deputy Sheriff.

Green & Mac  
27th Feb 1932 by  
leaving copy in  
J. T. Bradley  
W. D. Moore

BAY MINETTE LAND COMPANY,  
A Corporation

vs.

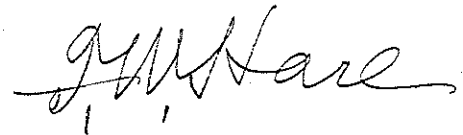
W. D. Stapleton, et al.

IN THE CIRCUIT COURT  
OF BALDWIN COUNTY,  
ALABAMA, IN EQUITY

This cause coming on to be heard on the motion of the respondent, Henry D. Moorner, to set aside the Decree Pro Confesso heretofore rendered against him on the cross-bill of J. T. Bradley,

IT IS ORDERED that upon the filing of a full and complete answer by the said Henry D. Moorner to the cross-bill of J. T. Bradley in this cause by June 4, 1932, the said Decree Pro Confesso against him on the said cross-bill shall stand set aside, otherwise to remain in full force and effect.

This 26th day of May, 1932.



Judge.



State of Maine  
Oxford County

Before me a notary public in and for  
the State of Maine here certify that before  
me this 20<sup>th</sup> day of September 1930 appeared  
this day Hampton Steving who by me being personally  
known and by me first duly sworn  
deposes and says: that deponent is President  
of the Bay Winette Land Company the maker of  
a mortgage for five thousand dollars, principal sum  
bearing date December 1928 made to  
W. D. Stapleton and Henry T. Moore. That in  
or about July 1929 the said Company sold a  
portion of the mortgaged lotter said  
Stapleton who in the contract of sale and later  
in a formal paper assumed the mortgage  
debt to the extent of three thousand dollars  
of principal and the interest thereon from the  
date of his said assumption, <sup>and the said Moore consents thereto</sup> that thus as between  
the parties to said mortgage the principal of said debt  
was reduced \$3000 - that the said Company has paid  
also on said mortgage debt about \$58 in March  
1929 and \$200 in July 1929 and a further sums  
of \$240, of \$80 and other sums sufficient to  
reduce the principal and interest of said mortgage  
to less than eleven hundred dollars and about  
one thousand dollars that the said Company  
is ready and willing and ~~about~~ able to pay the  
balance due but the said Moore disavowing

the assumption of the said mortgage by said  
Shafter and disregard the payments heretofore  
made in reduction of the mortgage debt  
with interest has threatened a sale under  
a power contained in said mortgage of  
the mortgaged property to collect a  
sum of about fifty five hundred dollars.  
Defendant therefore asks that any sale as  
aforesaid be enjoined and that the court  
determine the amount due on said mortgage  
and for such other and further relief as may  
be just and equitable Hampton D. Ewing

Personally appeared Hampton D. Ewing  
and made oath to the truth of the foregoing  
statements.

G. Myron Kimball  
Notary Public

My commission expires  
August 18, 1921

STATE OF ALABAMA,

BALDWIN COUNTY.

Before me, Margaret Huggins, a Notary Public, in and for said County and State, personally appeared W. D. Stapleton, who being by me first duly and legally sworn doth depose and say:

That he intered into a contract with the Bay Minette Land Company to purchase some of the property under a mortgage dated December 8, 1928 to W. D. Stapleton and Henry D. Moorner, that

the purchase price was to be \$3,000.00; That a written contract *> dated June 19, 1928 and hereto attached* was entered into and that he did not assume the payment of any

portion of the mortgage given to himself and Henry D. Moorner, *but*

*agreed to buy* bought the property upon the terms and conditions as set out in said contract. *That no deed has ever been made so apparent*

Dated this September 24th, 1930.

*W. D. Stapleton*

Subscribed and sworn to before me on this September 24th, 1930.

*Margaret Huggins*  
Notary Public.

Correct.  
Ex. 24

STATE OF ALABAMA)

BALDWIN COUNTY )

THIS MEMORANDUM of agreement made this 12th., day of June, 1929, by and between RAY MINETTE LAND COMPANY, a corporation, organized under the laws of the State of Alabama, hereinafter called the seller, and J. W. McMILLAN, hereinafter called the purchaser,

WITNESSETH: That the seller, in consideration of the sum of SIXTEEN THOUSAND DOLLARS, paid or to be paid as hereinafter stated, hereby agrees to sell to the purchaser the following described lands lying in Baldwin County, Alabama, in Township two South, Range three East, to-wit:

*copy*  
All that piece or parcel of land lying in the Southeast quarter of the Northeast quarter of Section sixteen in said Township and Range, Lot number six, in Block one, shown on that certain Map entitled Ft. Morgan Addition to Bay Minette, made by D. F. Albin, Engineer, bearing date June 12, 1929, and intended to be recorded herewith.

✓ The seller further contracts and agrees to dedicate to the public for a street a strip of land sixty feet wide along the West boundary line of the aforesaid property and connecting with Brady Road and Railroad Street, run Eastwardly and Westwardly to the Fertilizer Plant.

The said purchaser hereby agrees to buy the said property for the consideration above stated, and has paid, or agrees to pay for the same as follows: One Hundred and Fifty Dollars cash, the receipt of which is hereby acknowledged, and the balance, namely, Fifteen Thousand Eight Hundred Fifty Dollars to be paid as follows: One Hundred Fifty Dollars on the 12th., day of July, 1929, and a like sum on the 12th., day of each calendar month thereafter, to and including the 12th., day of May, 1931, and Twelve Thousand Four Hundred Dollars on the 12th., day of June, 1931, each of which said payments is evidenced by the promissory note

of the purchaser to the seller of even date and tenor, and each of the said monthly installment notes in the sum of One Hundred and Fifty Dollars bear interest at the rate of eight per cent per annum from date, payable when and as the note is payable, interest on the said note due June 12, 1931 for Twelve Thousand Four Hundred Dollars is payable semi-annually, and is evidenced by four interest notes given by the said purchaser to the said seller in the sum of Four Hundred Ninety-Six Dollars each due and payable respectively on the 12th., day of December, 1929, the 12th., day of June and December, 1930, and 12th., day of June, 1931.

The said purchaser may, if he shall so elect, obtain an extension of the said note due June 12, 1931, so that the same shall be payable under the said extension, One Hundred and Fifty Dollars per month on the 12th., day of June, 1931, and alike sum on the 12th., day of each calendar month thereafter to and including May 12, 1933, and Eight Thousand Eight Hundred Dollars, June 12, 1933. In the event <sup>the purchaser</sup> he shall elect to extend the said payment in the said manner, he shall execute to the seller notes for each of the said payments <sup>all date June 12 1931</sup> above set out, and each of the said monthly installment notes of One Hundred and Fifty Dollars each shall draw interest at the rate of eight per cent per annum, payable when and as the said note is payable, and the interest on the said payment of Eight Thousand Eight Hundred Dollars, due June 12, 1933 shall be evidenced by four interest notes each in the sum of Three Hundred Fifty-Two Dollars, payable respectively on the 12th., day of December, 1931, 12th., day of June and December, 1932 and on the 12th., day of June, 1933.

It is further understood and agreed that the purchaser

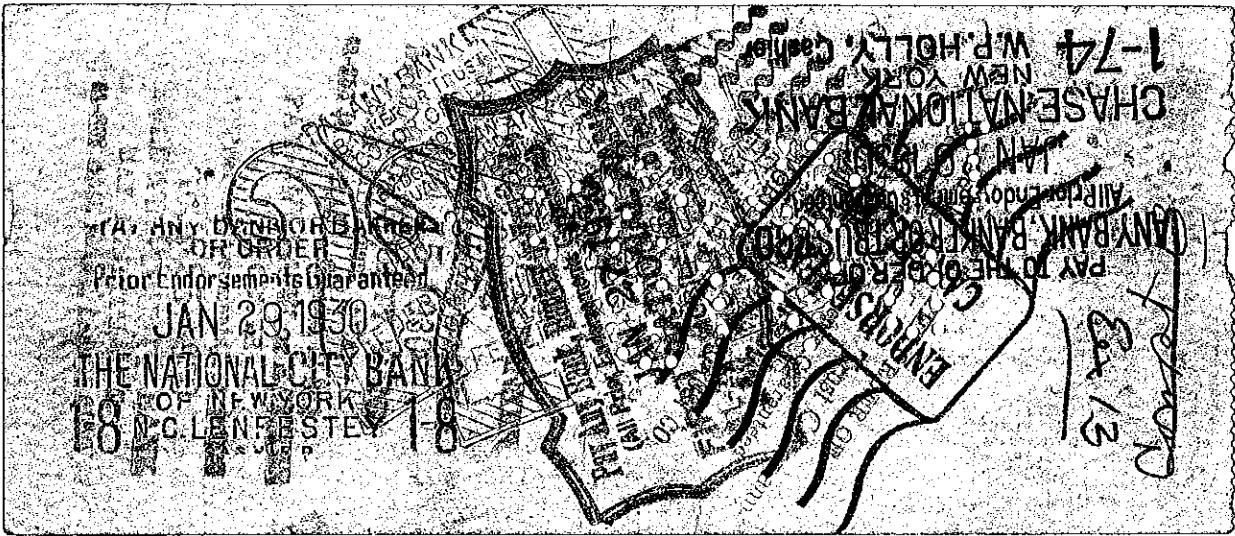
may pay any one, or all of the said notes before maturity thereof on giving thirty days notice of such intended payment to the seller, and on any notes whose payment shall be thus anticipated the purchaser shall pay the interest thereon only to the date of payment.

The seller hereby agrees that when the deferred purchase money shall be reduced to, or below, Nine Thousand Dollars, if the purchaser shall in no way be in default in the payment of any installment hereunder, the seller will, on demand of the purchaser, execute and deliver to him a good and sufficient full warranty deed conveying the above described lands, subject to the sellers lien for the remaining unpaid purchase money, on the condition that simultaneously with the delivery of the said deed the purchaser will execute to the seller a purchase money mortgage to secure the amount owing to the seller hereunder. The said deed and mortgage shall be recorded by the seller at the expense of the purchaser. The purchaser shall not be entitled to any deed hereunder so long as he shall be in default in the payment of any amount owing hereunder.

Upon the delivery of the deed hereunder the seller will furnish to the purchaser a merchantable abstract showing a merchantable fee simple title, clear of encumbrance vested in it.

The seller will pay the taxes on the said lands due October 1st, 1929. The purchaser will assess and pay all taxes assessed on October 1st, 1929 or thereafter.

~~Now~~ to the essence of this contract, and in the event the purchaser shall fail to make any payment as the same shall become due hereunder, or as the same may become due ~~and~~ as extended *before the amount due on the purchase money shall be reduced to \$7000* hereunder, the seller may, at its option, cancel this contract and any and all sums paid by the purchaser hereunder shall be retained by the seller as liquidated damages for the breach of this contract and as rent on the said premises, and upon such cancellation the seller



No. 572

YONKERS, N.Y.

4/15

1932

WESTCHESTER TRUST COMPANY

50-53

PAY TO THE  
ORDER OF

Baldwin County Bank

\$400

Four hundred

DOLLARS

THIS CHECK IS PAYABLE THROUGH ANY MEMBER OF THE NEW YORK CLEARING HOUSE WITHOUT CHARGE FOR EXCHANGE



Hampton D. Cunningham

SEE REVERSE FOR FULL DISCLOSURE



B. MINETTE, ALA.

3/26

1927 No.

# BALDWIN COUNTY BANK

61-258

Pay to the  
order of

H. D. Moore

\$238 <sup>00</sup>/<sub>100</sub>

Two hundred & thirty eight 00/100

Dollars

Hampton S. Curing

1924  
1-12-24  
RETURN RECEIPT

and from the Postmaster the Registered or Insured Article, the original  
which appears on the face of this Card.

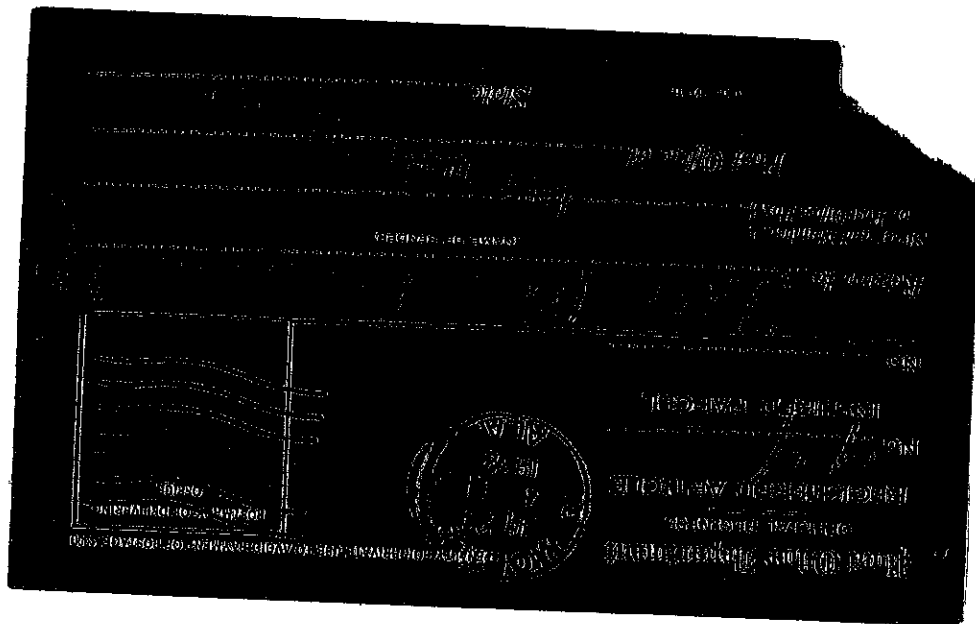
Harold Smith & Co.  
Postmaster and addressee

624 Broadway  
Postoffice and address

1924

1924

1924



Printed and for sale by Moore Ptg. Co. Bay Minette, Ala.

40.00  
\$2000.00  
On June 8th, 1929

Bay Minette, Ala., December 8th 1928

after date without grace. I promise to pay to the order of

W.D. Stapleton and Henry D. Moorer  
Two Thousand Dollars,  
for value received, in gold coin of the United States of the present standard weight and fineness with interest  
from date at the rate of 8 % per annum until paid.

Payable at Baldwin County Bank  
The parties to this instrument, whether maker, endorser, surety or guarantor, each for himself, hereby severally  
waive as to this debt, or any renewal thereof, all right to exemption under the Constitution and Laws of Alabama, as  
to personal property, and they each severally agree to pay all costs of collecting, or securing, or attempting to collect  
or secure this note, including a reasonable attorney's fees, whether the same be collected or secured by suit or other-  
wise. And the maker, endorser, surety or guarantor of this note severally waives demand, presentment, protest,  
notice of protest suit and all other requirements necessary to hold them, and they agree that time of payment may be  
extended without notice to them at such extension. The bank in which this note is payable is hereby authorized to  
apply on or after maturity, to the payment of this debt any funds in said bank belonging to the maker, surety, endor-  
ser, guarantor, or any one of them.

Witness my hand and seal the 8th day of December 1928

No Due

23116

Hampton Seuring

AUG 6 1929  
J.S. Norton, Cashier

PAY TO THE ORDER OF  
ANY BANK OR BANKER  
All prior endorsements guaranteed  
The Merchants' National Bank of Mobile  
MOBILE, ALA.  
61-29 J.S. Norton, Cashier 61-29  
JUN 5 1929

61-29  
J.S. Norton, Cashier  
61-29

Wm. J. J. J.

Wm. J. J. J.

Wm. J. J. J.

00.00

BAY MINETTE, ALA. December 8

1928

On the 8th., day of June 1929, I, we, or either of us, promise to pay to  
W. D. STAPLETON & HENRY D. MOORE  
der of Baldwin County Bank of Bay Minette, Alabama.

Thousand & 00/100 DOLLARS,

received, in gold coin of the United States of the present standard of weight and fineness. interest from date at 8%

Negotiable and payable at Baldwin County Bank, Bay Minette, Alabama.

parties to this instrument whether maker, endorser, surety, or guarantor, each for himself, hereby severally waive as to this debt, or any renewal  
all rights of exemption under the Constitution and Laws of Alabama, as to personal property, and they each severally agree to pay all costs of  
or securing or attempting to collect or secure this note, including a reasonable attorney's fee, whether the same be collected or secured by suit  
wise. And the maker, endorser, surety or guarantor of this note severally waives demand presentment, protest, notice of protest, suit and all other  
nts necessary to hold them and they agree that time of payment may be extended without notice to them of such extension. The bank  
this note is payable is hereby authorized to apply, on or after maturity to the payment of this debt any funds in said bank belonging to the  
urety, endorser, guarantor, or any one of them. All suits for the collection of this note may be prosecuted in any Court in this State that the  
assignee elects.

my hand and seal the day above given.

*Harold D. Dean* (Seal)  
(Seal)  
(Seal)

FIRST NATIONAL BANK  
MOBILE ALABAMA

\$1000<sup>00</sup>

MOBILE, ALA.

Nov 7<sup>th</sup> 1929 **COLL**

Nov 8<sup>th</sup>, 1929

PAY TO THE ORDER OF

Henry Sumner

One thousand & no/100

DOLLARS

WITH EXCHANGE

NOV 10 1929

23

VALUE RECEIVED AND CHARGE SAME TO ACCOUNT OF

TO H. D. Ewing, Hfl  
160 Broadway, N.Y.

Henry Sumner

*Received from  
J. W. Woolf  
for \$100.00  
11/27/53*

*Condit 11*

PAID TO THE ORDER OF  
ANY BANK OR BANKER  
NOV 27 1953  
FIRST NATIONAL BANK  
61-26 MOBILE, ALA.  
J. W. WOOLF  
Cashier



*Wm. & Bernice  
no K. H. 00000000*



BAY MINETTE LAND COMPANY,  
a Corporation,

Complainant,

Vs.

W. D. STAPLETON and  
HENRY D. MOORER,

Defendants.

IN THE CIRCUIT COURT,

BALDWIN COUNTY,

ALABAMA.

Comes the Respondents, W. D. Stapleton and Henry D. Moorner,  
and files this their answer to the original bill filed in said  
cause.

1. Respondents admit the allegations contained in Para-  
graph "1".

2. Respondents admit that the maturity of the indebtedness  
was extended from time to time until September 3rd, 1930, and  
state that this was done for and on account of the Bay Minette  
Land Company being unable to pay the indebtedness as promised;  
and your Respondents deny that a portion of the said land has  
been conveyed to W. D. Stapleton by a deed and they also deny  
that the said W. D. Stapleton assumed the payment of any por-  
tion of the principal indebtedness secured by this mortgage;  
and they further deny that the matter between Judge W. D. Staple-  
ton and the Bay Minette Land Company was made with the knowledge  
and consent of the said Henry D. Moorner; And Respondents further  
deny that the Bay Minette Land Company has made payments to  
Henry D. Moorner on said mortgage other than a portion of the in-  
terest which has been applied on said mortgage.

Respondents in further answer to Paragraph "2" state that the Bay Minette Land Company and W. D. Stapleton, one of the Respondents, entered into a Contract for the sale and purchase of this property, a copy of which is hereto attached and marked Exhibit "A" and that at no time did the Bay Minette Land Company convey to the said W. D. Stapleton by deed the property described in said Contract nor did the said Bay Minette Land Company at any time since the execution of said Contract offer to carry out the terms of the agreement.

3. The Respondents for answer to Paragraph "3" admit that on August 2nd, 1930 the Respondent, Henry D. Moorner, notified the Complainant herein that there was due on said mortgage the sum of Fifty-four Hundred Twenty (\$5420.00) Dollars and demanded that this sum be paid on or before September 3rd, 1930, the date to which said mortgaged indebtedness had been extended, and deny that the said Henry D. Moorner had refused to allow any credit made to him but in fact showed to Hon. H. D. Ewing, for the Bay Minette Land Company where he had been given credit for the items which he denied; And that the said H. D. Ewing then advised the said Henry D. Moorner that he thought there may be some other credits which he had not yet found and was requested by the said Henry D. Moorner to produce or inform him as to what payment he had not been credited with and that same would have immediate attention and proven to his satisfaction that credit had been given and that the said H. D. Ewing, for and on the part of the Bay Minette Land Company, has failed or refused to inform the said Henry D. Moorner as to any other payment alleged to have been made by him and for which he had not been given credit; That at the time of this conversation and prior

thereto the said H. D. Ewing was informed by the Respondent, Henry D. Moorer, that the mortgage would be foreclosed unless paid on or before September 3rd, 1930 and that he stood ready to correct any errors and that said H. D. Ewing has failed to make any other effort toward adjusting the supposed difference although this conversation took place sixty days before September 3rd, 1930; and the Respondents deny that it would have been useless to tender the said amount or any amount less than Fifty-four Hundred Twenty (\$5420.) Dollars, to the said Henry D. Moorer, but in fact allege that a strenuous effort was made on the part of Henry D. Moorer, one of the Respondents to get the Bay Minette Land Company through Mr. H. D. Ewing to convey lot for a consideration of Four Hundred (\$400.00) Dollars, a price which he had agreed to accept, and place this on this indebtedness, all of which the said H. D. Ewing, for the Bay Minette Land Company, refused to do.

Respondents admit that they refuse to credit the Three Thousand (\$3,000.00) Dollars on said mortgage for and on account of the said W. D. Stapleton not assuming the indebtedness, but <sup>ENTERED INTO</sup> ~~in fact on~~ a contract to purchase the property on certain conditions, none of which had been carried out by the Bay Minette Land Company.

4. In answer to the Paragraph "4", Respondents admit that they have caused a notice to be published in the Baldwin Times that they will sell Complainant's land as described in said mortgage under the Power of sale contained therein on September 27th, 1930 unless restrained from doing so by this Honorable Court and state the truth to be that this note is placed with the Mobile National Bank, Mobile Alabama, that it is due on, to-wit, October 1st, 1930 and that the Bank demands payment and that it is necessary that this indebtedness be paid or that the property be sold to pay the indebtedness

secured by the said mortgage; That this money was borrowed for the benefit of the Bay Minette Land Company and although it has been extended many times, the Bay Minette Land Company has not yet paid any portion of same other than a small amount of interest; That the said H. D. Ewing for and on the part of the Bay Minette Land Company wrote the Mobile National Bank, stating that Judge W. D. Stapleton had assumed the payment of Three Thousand (\$3,000.00) Dollars and that he had paid to <sup>Henry D. Moser</sup> ~~several~~ several payments which had not been credited upon the note, all of which are untrue. That these letters, together with the telegram were sent to the Bank for the purpose of hurting the credit of your Respondents and embarrassing them, that it is evidently done with malice on the part of the said H. D. Ewing and for the further purpose of attempting to delay foreclosure of this mortgage;

That the said H. D. Ewing, as heretofore stated, had information or could have obtained information as to the accuracy of his allegations and that for some reason he elected not to do so.

5. Respondents for answer to Paragraph "5" allege that no part of the land has been released from said mortgage and that if the property when sold will bring more than the amount secured thereby, that the excess will be promptly turned over to the Bay Minette Land Company and that a sale of said property can do no great harm as it can be promptly redeemed for the amount of indebtedness and expenses incurred by the foreclosure.

6. For answer to Paragraph "6", Respondents state that unless required to do so by this Court, do not care to discuss the ability of the Bay Minette Land Company to pay the indebtedness secured by the said mortgage, that the Respondents only want the amount due under said mortgage, and deny that they are attempting to force

the Complainant to pay any amount not actually due and allege that your Respondents are exercising said Power of Sale in good faith for the purpose of collecting what is justly due them and not to force payment of any amount other than the amount due; That there will be no cloud upon the title of Complainant other than that which is legal and proper and that the said cloud can be removed by the right of redemption at any time by paying the amount due under said mortgage; And ~~that if the Complainant wishes an accounting~~ that there is no just reason why the sale should be held up under such reckless and false allegations as made by the Complainant in this Bill of Complaint.

7. For answer to Paragraph "7", your Respondents allege and submits, that as a fact, the Complainant had cause to know that the allegations contained in his bill of complaint were not true and they further allege that there is no bona fide dispute as to the amount due under the said mortgage, but that the said H. D. Ewing, for and on the part of the Bay Minette Land Company is surreptitiously and maliciously attempting to delay the foreclosure of the said mortgage in order to embarrass your Respondents with the Mobile National Bank, of Mobile, Alabama.

Your Respondents allege that prior to advertising property for sale that the said H. D. Ewing for and on the part of the Bay Minette Land Company agreed to admit that the amount was due under the said mortgage provided he could get an extension of same until October 15 and that Respondents requested the Mobile National Bank to extend this note for a period of sixty days, but were informed by said Bank that they would prefer the note being paid and would pass same for a period of thirty days with instructions

to Respondents to take steps to get the money and this is the cause of the notice of foreclosure.

The Complainant has attempted to cause the Mobile National Bank to think that Respondents had deposited the note with it which had been partially paid after the Respondents had received full credit for the note; and your Respondents allege that this bill was brought with malice and for the purpose of hindering the Respondents in meeting their obligation to the Mobile National Bank.

Respondents further allege that the sale of the property could do no harm whatever to the Bay Minette Land Company, the Complainant herein and that to enjoin the sale of the said property would embarrass your Respondents and force them to meet an obligation which was created solely for the benefit of the Bay Minette Land Company out of their own means and to satisfy a malicious feeling towards the Respondents, on the part of the said H. D. Ewing.

The Respondents allege that the statements contained herein are made in simple language for the purpose of getting the matter before this Honorable Court and are not made for the purpose of being abusive towards the Complainant, but only as a desire to get the matter properly before this tribunal.

N. C. Stone

Solicitor for Respondents.

EXHIBIT "A".

STATE OF ALABAMA,

BALDWIN COUNTY.

THIS AGREEMENT, in duplicate, this June 19, 1929, between BAY MINETTE LAND COMPANY, as "Seller", and W. D. STAPLETON, as "Purchaser",

WITNESSETH: That in consideration of the sum of One Dollar to it in hand paid by purchaser, receipt whereof is hereby acknowledged, and of the mutual covenants herein contained, seller agrees to convey to purchaser, by full warranty deed, the real property hereinafter described and to transfer and assign to the purchaser the other rights herein described at and for the total purchase price of THREE THOUSAND DOLLARS (\$3,000.00), same to be paid in cash upon delivery of deed conveying fee simple title to the said real estate, free of all encumbrances, and the delivery of proper transfer and assignment for the other rights, the property covered hereby and to be conveyed and transferred hereunder being in Baldwin County, Alabama, described as follows, viz.:

All that portion of the East half of the Northeast quarter of Section sixteen, Township two South, Range three East, being all of lots, one, two, three, four, five, eight, nine, ten and eleven and that part of lot six described as follows: Commencing at the Northeast corner of the said lot six, run thence South along the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company 25 feet, thence Westwardly and parallel with the North line of said lot six 155 feet, thence Northwardly and parallel with the West line of the right of way of the Bay Minette and Ft. Morgan Railroad Company to the North line of said lot six, thence Eastwardly along the North line of said lot six to the point of beginning, all in Block one, as shown on that map entitled Ft. Morgan Addition to Bay Minette, made by D. F. Albin, Engineer, dated June 12, 1929, and filed for record June 14, 1929, in the office of the Probate Judge of Baldwin County, Alabama.

Also all and the entire right, title and interest of the seller in and to the oil track spur and that portion of the side track along the B. M. & Ft. M. Branch of the L. & N. Railroad Company lying opposite the Ft. Morgan Addition to the Town of Bay Minette, lands of Peoples Fertilizer Company and the land adjoining Peoples Fertilizer Company on the North, insofar as such tracks are North of the South line of the real estate hereinabove described, together with all rights and monies to become due under rental agreement with the Pan American Petroleum Corporation after the date hereof. Upon transfer of such track rights hereunder, purchaser may make a new trackage agreement with the L. & N. Railroad Company in the purchaser's name with respect to the portion of the tracks covered hereby, purchaser being entitled to all

benefits seller may have under original contracts insofar as same relate to portions of track covered hereby, including refund of any monies.

All conveyances and transfers hereunder to be made subject to easement to Pan American Corporation under the contract above referred to.

The purchaser agrees to purchase the above properties under the terms and conditions hereof, same to be consummated upon presentation of proper conveyances and transfers by seller which shall be done within thirty (30) days from this date.

Witness the hands and seals of the parties hereto in duplicate on the day and year first above written.

BAY MINETTE LAND COMPANY,

By Hampton D. Ewing, (Seal)  
Its President.

WITNESSES:

Norborn Stone.

W. D. Stapleton (Seal)

(Corporate Seal)



STATE OF ALABAMA,

BALDWIN COUNTY.

Before me, Margaret Huggins, a Notary Public in and for said County and State personally appeared Henry D. Moorer, who being by me first duly and legally sworn doth depose and say:

That the allegations contained in the foregoing answer to the Original Bill filed in this cause are true and correct.

Dated this September 24th, 1930.

Henry D. Moorer

Subscribed and sworn to before  
me on this 24th day of September, 1930.

Margaret Huggins

Notary Public. *W*

ms 68

BAY MINETTE LAND COMPANY,  
Complainant,

-VS-

W. D. STAPLETON AND HENRY D.  
MOORER,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

IT IS HEREBY AGREED by and between Harry T. Smith and Caffey and Jesse F. Hogan as solicitors for the complainant in the above entitled cause, and Norborne R. Stone, as solicitor for respondents in said cause, that an order of reference in said cause, in the form, a copy of which is attached hereto as Exhibit "A" may be forthwith entered by the Judge of the Circuit Court of Baldwin County, Alabama, in the above styled cause, appointing C. M. A. Rogers, Special Master with the power and authority conferred by said order, and it is further agreed between the solicitors of record that the reference in said cause shall be held on Thursday, November 6, 1930, before the said C. M. A. Rogers and from day to day thereafter, or at such other time or times as the Special Master may appoint until the conclusion of said reference.

Dated this 3 day of Nov, 1930.

*Harry T. Smith and Jesse F. Hogan*  
Solicitors for Complainant.

*Norborne R. Stone*  
Solicitor for Respondents.

EXHIBIT "A"

BAY MINETTE LAND COMPANY,  
Complainant,

-VS-

W. D. STAPLETON AND HENRY D.  
MOORER,

Respondents.

:  
: IN THE CIRCUIT COURT OF  
:  
: BALDWIN COUNTY, ALABAMA.

:  
: IN EQUITY.  
:  
:  
:  
:

On motion of the complainant and by agreement  
between the solicitors of record of the complainant and the re-  
spondents, in the above entitled cause,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
that the said cause be referred to C. M. A. Rogers as Special  
Master to hold a reference and to ascertain and report to this  
Court the amount that the complainant, Bay Minette Land Company  
should, in equity and good conscience be required to pay to Henry  
D. Moorer and/or W. D. Stapleton in order to redeem the property  
described in the original bill of complaint from the mortgage  
therein referred to and described, the said Special Master to re-  
port his findings together with the evidence taken before him at  
said reference as promptly as practicable to this Court.

Dated this *4th* day of November, 1930.

*J. W. Hare*  
\_\_\_\_\_  
JUDGE.

BAY MINETTE LAND COMPANY,  
Complainant.

versus.

W. D. STAPLETON AND HENRY  
D. MOORER,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,  
ALABAMA.  
IN EQUITY.

And now comes the complainant, Bay Minette Land Company, and excepts to the report of the Special Master upon the following grounds, that is to say:-

1. The complainant excepts to the said report insofar as it reports that the balance due by the complainant upon the mortgage of December 8, 1928, for \$5,000.00, which is the subject matter of this litigation, with interest thereon to the first day of March, 1931, amounts to \$5,521.91, upon the following grounds:-

(a) Because it appears from the evidence that the defendant, W. D. Stapleton, entered into a contract with the complainant on the 19th day of June, 1929, a copy of which is attached to the defendants' answers and marked Exhibit "A", by the terms of which the defendant, W. D. Stapleton, purchased from the complainant a part of the lands covered by said mortgage, and also the entire right, title and interest of the seller in and to the oil track spur and that portion of the side track along the B. M. & Ft. M. Branch of the L. & N. Railroad Company lying opposite the Ft. Morgan Addition to the Town of Bay Minette, lands of Peoples Fertilizer Company and the land adjoining Peoples Fertilizer Company on the North, insofar as such tracks are North of the South line of the real estate hereinabove described, together with all rights and moneys to become due under rental agreement with the Pan-American Petroleum

Corporation after the date of the contract, and after entering into said contract, took possession of the property therein described, which he still retains, without having offered to surrender to the complainant, and executed and delivered to the Louisville & Nashville Railroad Company a release of the rights or a portion of the rights which he acquired by said contract so as to place himself in a position in which he could not restore to the complainant that which he had received under said contract and could not rescind the said contract of purchase, and thereafter on the 6th day of November, 1930, the complainant tendered to the said W. D. Stapleton a proper conveyance under the said contract, but the defendant while retaining such possession, and after disposing of a portion of the rights which he had acquired under said contract by a release to the Louisville & Nashville Railroad Company, refused to accept said conveyance on the ground that complainant had not fulfilled its part of the contract, and because it appears from the undisputed testimony that the defendants W. D. Stapleton and Henry D. Moorner each owned one-half of the mortgage indebtedness, so that there is no difficulty in the allowance of a set-off for the \$5,000.00, due by the defendant W. D. Stapleton, against the one-half of the mortgage indebtedness which is owned by him, without in any manner affecting the rights of the defendant Henry D. Moorner, and it was the duty of the Special Master to have so stated the account as between the complainant and the defendant Moorner, separately from the account between the complainant and the said Stapleton, so as to give proper credit to the complainant as against the said Stapleton for the said \$3,000.00, or so as to allow the complainant a set-off therefor as against said Stapleton, without in any manner affecting the ascertainment of the amount due to the said Moorner, to the end that the complainant might be allowed to satisfy said mortgage by paying to the said Stapleton that which was due to

him, if anything, and by paying to said Henry D. Moorer the balance due the said Moorer, if any there is.

In support of the foregoing exception, the complainant notes the following pleading and evidence:-

- a. The bill of complaint and the answer thereto.
- b. Exhibit "A" to the answer.
- c. Respondents' Exhibit "F", (Transcript of Evidence, page 117).
- d. The testimony of R. E. Cooley as to Stapleton's possession. (Transcript of Evidence, pages 7 and 8).
- e. The testimony of Hampton D. Ewing as to Stapleton's possession. (Transcript of Evidence, pages 46, 47, 68, 80, 82, and 85).
- f. The testimony of W. D. Stapleton as to his having taken possession and used the property. (Transcript of Evidence, pages 124, 125, 137 and 138).
- g. The testimony of Hampton D. Ewing as to no part of the \$3,000.00 paid. (Transcript of Evidence, pages 27, 28 and 135).
- h. Testimony of Hampton D. Ewing as to Stapleton's agreement to apply the \$3,000.00 to the mortgage debt. (Transcript of Evidence, pages 20, 21, 22, 28, 34, 57, 58, 85 and 86).
- i. Testimony of W. C. Beebe upon direct examination.
- j. Testimony as to the rental value of the real estate purchased by Stapleton under said contract by Hampton D. Ewing. (Transcript of Evidence, pages 22, 24, 48 and 81).
- k. Testimony of W. D. Stapleton as to receiving rents. (Transcript of Evidence, pages 132, 135 and 136).
- l. Testimony of Hampton D. Ewing as to Stapleton's receiving rents. (Transcript of Evidence, pages 57, 74,

98 and 99).

m. Testimony of Hampton D. Ewing as to the tender of the deed and the refusal of Stapleton to accept delivery (Transcript of Evidence, pages 12 and 41).

n. Testimony showing that the tender of the deed was refused on the ground that the complainant had failed to comply with the terms of the contract. (Transcript of Evidence, pages 12 and 41).

o. Evidence of transfer or release by W. D. Stapleton to the Louisville & Nashville Railroad Company. - Testimony of Hampton D. Ewing. (Transcript of Evidence, pages 8, 27, 52, 54, and 57).

p. Testimony of W. D. Stapleton as to transfer or release by him to the Louisville & Nashville Railroad Company. (Transcript of Evidence, pages 135 and 135).

q. The release to the Louisville & Nashville Railroad Company signed by W. D. Stapleton. (Complainant's Exhibit Number 21, page 56).

r. Testimony of Hampton D. Ewing that property sold to Louisville & Nashville Railroad Company, (Exhibit "21") was a part of the property sold to Stapleton, (Exhibit "A" to the answer). (Transcript of Evidence, page 22).

s. Testimony of W. C. Beebe as to agreement by W. D. Stapleton and Henry D. Moorner to release the mortgage so far as McMillan was concerned.

t. Testimony of Hampton D. Ewing explaining the payment of the \$3,000.00 mortgage. (Transcript of Evidence, pages 15 and 14).

u. Testimony of Hampton D. Ewing as to sale to McMillan. (Transcript of Evidence, pages 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23).

v. Testimony of Hampton D. Ewing that W. D. Stapleton never obtained permission to enter into the contract with the Louisville & Nashville Railroad Company.

W. Testimony of Hampton D. Ewing that W. D. Stapleton never offered to rescind the contract. (Transcript of Evidence, page 100).

x. Testimony of W. D. Stapleton that he and the defendant, Henry D. Moorer, each owned a one-half interest in the indebtedness secured by the mortgage for \$5,000.00, involved in this litigation. (Transcript of Evidence, page 116).

y. Testimony of W. D. Stapleton that he and the defendant, Henry D. Moorer, each owned a one-half interest in the indebtedness secured by the \$5,000.00 mortgage. (Transcript of Evidence, page 194).

z. Contract with McMillan, - Exhibit Number "24". (Transcript of Evidence, page 60).

zz. Testimony of W. G. Thompson, (Transcript of Evidence, pages 200 to 212) and all portions of the testimony of Hampton D. Ewing and W. C. Beebe not hereinabove specifically noted.

2. Because the Special Master, in making up the account of the mortgage indebtedness involved in this case, failed to so state said account as to allow the complainant a set-off for credit, so far as the defendant W. D. Stapleton was concerned, on account of the \$5,000.00, which the said W. D. Stapleton contracted to pay under the contract, of which Exhibit "A" to the answer is a copy.

In support of this exception the complainant refers to the same testimony hereinabove noted under the first exception.

3. The complainant excepts to said report insofar as it finds and reports that Bay Minette Land Company may not at this time insist on W. D. Stapleton's carrying out the contract of purchase and disallows the complainant the right to



set-off the \$3,000.00 which Stapleton had contracted to pay, against so much of the indebtedness secured by the mortgage described in the original bill of complaint as belonging to W. D. Stapleton, and insofar as said report fails to allow said set-off and credit as against the said W. D. Stapleton.

In support of this exception, the complainant refers to the same testimony hereinabove noted under the first exception.

in support of both of the above exceptions, This complainant further points out/that it appears from the evidence that W. D. Stapleton entered into possession of the property under the contract of purchase, and still retains the same; that he never requested the conveyance of said property, or paid any part of the purchase price; that he has collected the rents, incomes and profits therefrom, and is still exercising that privilege; that he has never demanded a conveyance or offered to rescind the contract until the deed was tendered to him; that if the said set-off of \$3,000.00 was allowed and credited upon his portion of the mortgage indebtedness, it would more than pay the same, and if the account was so stated as to enable the complainant to pay off the balance due under the mortgage to the defendant, Henry D. Moorner, which the complainant has offered in his bill to do, there would be no encumbrance upon the property sold to him; that the encumbrance of this mortgage was, however, excepted in the contract; that the complainant has a vendor's lien for the payment of the purchase price of \$3,000.00 which would be unnecessarily destroyed if the report of the Special Master should be confirmed; that by said report the complainant would be compelled to pay to the said W. D. Stapleton a large sum of money notwithstanding the fact that the said W. D. Stapleton was indebted to it in a larger sum of money, and at the same time the complainant's right to a security of the said balance by a vendor's lien would be destroyed.

4. Complainant excepts to the report of the Special Master insofar as it finds and reports that the respondents are entitled to reasonable attorney's fees for foreclosing the mortgage which amounts to \$550.00, upon the following grounds:-

a. Because there is nothing in the contract or in the law authorizing the respondents, the mortgagees, to compensation for foreclosing the mortgage.

b. Because the respondents have not foreclosed this mortgage, but this bill of complaint is for the express purpose of preventing them from doing so.

c. Because it has not, as yet, been determined by the court what balance, if any, was due upon said mortgage indebtedness at the time that the respondent's undertook to foreclose said mortgage, or at the time that they were enjoined from doing so, and it is wholly incompetent for the Special Master to pass upon the attorney's fees for foreclosing the mortgage before it can be ascertained whether the complainant has made a proper or improper effort to foreclose the mortgage, or what amount is due thereon.

d. Because said matter was not within the terms of the reference, and has never been referred to the Special Master.

e. Because the amount of attorney's fees to which the mortgagees might be entitled under a foreclosure proceedings, cannot possibly be correctly determined until the service is rendered.

f. Because the only attorney's fees which have been incurred in this matter, as appears from the evidence, were those of Mr. Norborne Stone, who died after holding this reference, but before the report, and there is no evidence in the record showing, or tending to show what would amount to a fair

compensation for the work and labor which he had done at the time of his death, but the Special Master has, nevertheless, very generously undertaken to allow compensation for his services upon the theory that he had successfully conducted the entire litigation to a final decree and that this decree had resulted in the foreclosure of the mortgage.

The complainant notes in support of this exception all of the evidence which has been produced by either side upon this subject, consisting of the testimony of Mr. W. C. Beebe, (Transcript of Evidence, page 53-a) and testimony of Mr. Jesse F. Hogan, (Transcript of Evidence, page 176).

5. Complainant excepts to said report insofar as it fails to credit said mortgage indebtedness with the payment of \$25.00 on June 25, 1950.

In support of this exception, complainant calls the Court's attention to the fact that the Special Master refuses to allow the complainant any credit for said payment, not because he does not find that the payment was made on account of this mortgage, but because he finds that treating this payment in connection with another payment of \$250.00, he finds that the greater part of the aggregate of \$275.00 was paid upon another mortgage from complainant to defendants, for \$3,000.00 which would, of course, be the case even though this \$25.00 was paid on account of the mortgage in question and the \$250.00 was paid on some other account.

Complainant also notes in support of this exception the following testimony:-

Testimony of Hampton D. Ewing, (Transcript of Evidence, pages 38, 39 and 51); also complainant's Exhibit "5"; the check of Hampton D. Ewing for \$25.00, being complainant's exhibit number "20".

6. Complainant further excepts to the report of said Special Master in that it fails to allow the complainant a credit for \$250.00 which the complainant paid the defendants on the 30th day of June, 1930.

In support of this exception the complainant notes the testimony of Hampton D. Ewing, (Transcript of Evidence, pages 38, 39 and 51).

7. Complainant excepts to said report on account of the Special Master's failure to credit the mortgage indebtedness in suit with \$80.00 paid on June 22, 1929.

In support of this exception the complainant notes the following evidence:-

The testimony of Hampton D. Ewing, (Transcript of Evidence, pages 32, 33, 34 and 50).

8. Complainant excepts to said report on account of the Special Master's failure to credit the complainant with \$258.00 paid by the complainant to the defendants on March 27, 1929.

In support of this exception the complainant notes the following evidence:-

The testimony of Hampton D. Ewing, (Transcript of Evidence, pages 29, 30 and 50), and exhibit "6", consisting of a check, by which the said payment was made.

*Harry Smith Caffey*  
SOLICITORS FOR COMPLAINANT.

BAY MINETTE LAND COMPANY,  
Complainant,

Vs.

W. D. STAPLETON AND  
HENRY D. MOORER,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,

ALABAMA.

IN EQUITY .

Come W. D. Stapleton and Henry D. Moorner, defendants in the above styled matter and point out to the Court that Exceptions filed by the Complainant do not comply with Chancery Court Rules 93 and 94 and for that reason they are not in position to properly point out the specific testimony as required by the said Rules. However, we have endeavored to meet the requirements as best we could and file herewith statement showing testimony establishing the correctness of the Master's Report.

The Exceptions filed by complainant cites 32 whole pages of the Transcript and there being 212 pages, and if respondents attempted to answer likewise, would be compelled to cite all or practically of the pages not cited by the complainant, which would be nothing more than referring to the evidence as a whole.

  
HENRY D MOORER, ATTORNEY FOR RESPONDENTS.

BAY MINETTE LAND COMPANY,  
Complainant.

Vs.

W. D. STAPLETON and  
HENRY D. MOORER,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,  
ALABAMA,  
IN EQUITY.

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Come W. D. Stapleton and Henry D. Moorner, the defendants in the above styled cause and point out and show unto the Court what they consider material to the inquiry pertaining to the exceptions filed by the complainant to the report of the Special Master:

That the testimony referred to by the complainant in its exception does not fairly and fully present the question for decision.

To Exception 1 (a): We refer the court to testimony of W. D. Stapleton, Page 117, Transcript of Evidence in which he identifies the original agreement entered into between the Bay Minette Land Company and W. D. Stapleton, which is identified and marked Exhibit "F", also copy of which is also attached to the answer and marked as Exhibit "A".

Also refer to the testimony of W. D. Stapleton Page 125, of Transcript of evidence, in which he stated 'that he abandoned this property about five or six months ago.' Also Testimony, Page 125 in which he states: "I do not know whether he removed any of it, or not. I asked him to." (Meaning the buildings upon the property). Also at the bottom of Page 125 in which he testified as follows: "That the turpentine still has not been used for several months, or since he first abandoned operations."

Pages 132, 135 and 136, relate to the testimony of W. D. Stapleton as to receipt of rentals. In advising Mr. McMillan, testimony shows that Judge Stapleton simply testified as follows: (Page 135 of Transcript) "I said, they are here now, and I would collect the rent, if I was you."

On Page 136, he testified: "I did not authorize him to collect rent and to unload pipe on the property." and testimony shows that this was his advice to Mr. McMillan and was not instructions from Judge Stapleton in the least.

Reference is made to Page 120 of the transcript in which Judge Stapleton testifies as follows: "My recollection is he had one of these printed forms used in his line, with a description of this property, some of the terms of which may have been scratched out, his regular form of contract, and we would not accept it."

On Page 121 of Transcript, Judge Stapleton, in answer to the following question: "Did you in connection with the property to be purchased here under your contract, agree with Mr. Ewing that you would apply the purchase price on the Moorer and Stapleton \$5,000.00 mortgage?" replied, "No, sir, I did not."

Also in answer to the following question, (Page 121 of transcript) "Did the contract as drawn and executed represent the agreement that you finally had in connection with the purchase of it?" Judge Stapleton replied, "Yes Sir."

Testimony of H. D. Moorer, Page 150 of the transcript relating to conversation with Mr. Beebe as to release of property:

Testimony of H. D. Moorer, Page 149 Transcript relating to payment of \$3,000.00 mortgage.

Testimony of W. D. Stapleton, Page 121 of Transcript: "That he did not have any definite agreement with Mr. Beebe as to re-

leasing the property, but that Mr. Beebe made the statement that Mr. McMillan could hold back some of the last payment if the mortgage was not released."

At the time of discounting the notes which was a part of the McMillan transaction, the Bay Minette Land Company, entered into an agreement, contract or mortgage, which is referred to on Page 77 of the Transcript, reading as follows:

"Hereby warrants with and unto mortgagee \*\*\* save and except that certain mortgage from the Bay Minette Land Company to W. D. Stapleton and Henry D. Moorer of date the 8th day of December, 1928, and of record in the office of the Judge of Probate of Baldwin County, Alabama, in Mortgage Book 44, Page 445."

Also on Page 77 immediately following the above quotation there is an admission by Mr. Ewing that the \$5,000.00 mortgage is the one now in question.

To the 2nd Exception: Defendants refer to the Master's Report as a true and correct accounting of all monies paid by the Bay Minette Land Company on both mortgages and respectfully submit that both statements are absolutely correct, citing Master's Report and it refers to both accounts and to the contract Marked Exhibit "A" and attached to the answer.

To the 3rd Exception: Master's Report, the claim of \$3,000.00 which Judge Stapleton was to pay for the property under contract and marked Exhibit "A" and attached to the answer; This being the contract to purchase a portion of the property upon the condition that the contract was complied with; Testimony of Mr. Ewing Page 58 of Transcript shows that Stapleton's contract called for delivery of deed within 30 days and on same page of Transcript Mr. Ewing admits that he made a tender of the deed at the hearing before the Master.



In support of the second and third Exception the complainant points out that it appears that W. D. Stapleton entered into contract to purchase property, took possession, and still retains the same which is clearly incorrect for Judge Stapleton testified as follows: on Page 125 of Transcript, 'that he abandoned the property covered by the contract about six months ago' and there is no testimony to the contrary.

Complainant also states that complainant had a Vendor's Lien for the payment of the purchase price of \$3,000.00; when there is no testimony before the Master, nor instrument in writing or no intimation that the lien was reserved and the contract is very definite and complete (Attached as Exhibit "F".)

Testimony of Judge Stapleton that this was the complete agreement and made so because he did not accept the original contract offered by the Bay Minette Land Company, but instead, a new contract was drawn. Page 120 of the Transcript in which Judge Stapleton testified as follows: "My recollection is he had one of these printed forms used in his line, with a description of this property, some of the terms of which may have been scratched out, his regular form of contract, and we would not accept it."

We would like to ask the Court if Mr. Stapleton did not accept the contract as offered by the Land Company and insisted upon reducing the contract to writing and which was so carefully done by Exhibit "F", why did not the Land Company have the so-called agreement to apply this amount on the payment of the mortgage included in the contract? The contract (Exhibit "F") shows it is carefully drawn and stated in detail the requirements and that it was not a loose transaction.

If there was an agreement at the time to apply the purchase price stated in the contract on the mortgage why did the Land

Company on selling the McMillan notes to W. D. Stapleton, except that certain mortgage to W. D. Stapleton and Henry D. Moorer. (Page 77 of the Transcript.)

4th Exception: Relating to Attorney's fee...

Respondents in support of this refer to the original bill filed by the complainant to which an Exhibit was attached showing a copy of the foreclosure notice as published in the Baldwin Times with the name of Henry D. Moorer appearing as Attorney for W. D. Stapleton and H. D. Moorer. This petition was verified by the complainant, in addition to that, the testimony of H. D. Moorer, Page 173 of Transcript shows the amount due of \$5420.00 plus the attorney's fee in the sum of 15%, but offering to release the attorney's fee provided settlement was made by September 20. Also immediately following this on the same page, it shows that the notice was run in the paper for three weeks as provided in the mortgage. *As to atty's fee we cite original mortgage Exhibit "F" of Respondent.*

Respondents also cite Testimony of Hon. W. C. Beebe on Page 105 of Transcript, in which he testifies as to the customary attorney's fee in connection with the foreclosure of a mortgage involving approximately \$5200.00: "Fifteen percent on the first thousand dollars; and ten percent on the excess up to five thousand dollars and five percent thereafter."

We wish to call the courts attention that the suit being filed in Baldwin County, the property being located in Baldwin County, it should be governed by the Baldwin County rates. The Master very properly allowed the attorney's fee.

The fees of an attorney attach when the papers are placed with him for collection or for foreclosure.

In answer to Paragraph "C" of Exception No. 4, we refer to the Master's Report as to whether or not this Court has determined the amount due under the mortgage. In fact, this was the purpose of the hearing.

With reference to Paragraph 'c', we refer to the order of reference in which the Master was directed to determine the amount due under the said mortgage, and the amount necessary to redeem from the said mortgage, this being placed in the hands of an attorney before the suit was filed, for foreclosure, the attorney's fee was properly allowed. (See the original complaint with the foreclosure notice attached, verified by the complainant.)

In answer to Paragraph 'e' of Exception 4, we refer to the original complaint verified by the complainant and showing that H. D. Moorer was foreclosing the mortgage as attorney for W. D. Stapleton and H. D. Moorer, and that H. D. Moorer attended the hearing with Hon. N. C. Stone and also refer to the Testimony of Hon. W. C. Beebe, Page 105 of Transcript in which the testimony shows that 15% on the first thousand dollars, and ten percent on the excess up to five thousand dollars, and five percent thereafter is the Bar rate for Baldwin County.

The Bar rate of Baldwin County, Alabama should control irrespective of the Testimony of Mr. Jesse F. Hogan, who is also one of the attorney's for the Bay Minette Land Company and who is also interested in the outcome of this suit.

In this connection, we wish to call the court's attention to the fact that the reference was held at the instance of the complainant, that the complainant alleged that it was able, ready and willing to pay the balance found due under the mortgage; that the Master found the sum of \$5,521.91 due under the mortgage as of March 1st, plus the attorney's fee as shown by the evidence of \$550.00.

The decree gave the complainant what it prayed for irrespective of whether it met with its wishes or not and the Master very properly assumed that it would pay its just obligations and

and that an attorney's fee had been created and was a part of the mortgaged indebtedness as provided in and by said mortgage, as proved by verified account filed at the hearing by respondents.

Exception 5. This exception relates to the \$25.00 payment of June 25th, 1930, and we refer to Testimony of H. D. Moorer, Page 140 of Transcript in which he states that the \$25.00 was paid to the Baldwin County Bank and applied on the \$3,000.00 mortgage and that the item of \$250.00 was paid to the Baldwin County Bank and applied on the \$3,000.00 mortgage, (Page 140 Transcript) and that the \$25.00 payment was also the last payment actually made on the \$3,000.00 mortgage.

Testimony on Page 140 of Transcript also shows that the Bank was instructed to deliver the note to Mr. Ewing when he paid the \$25.00. An examination of the note, which is in evidence, will disclose the credit of the \$25.00 and the \$250.00. (See the note in evidence, Marked Exhibit 5).

Also refer to letter from H. D. Ewing referred to in Testimony of H. D. Moorer, Page 174 of Transcript in which Mr. Ewing said: "I sent you today \$1,000.00 to make the last payment on the \$3,000.00 mortgage. There is a little balance due, but I want you to turn the mortgage and note over to Miss Cain and cancel the mortgage of record in Escambia County, and trust me for the small balance that is yet due. I have not your statement before me." This letter was dated April 18th, 1930 and shows that there was a small balance and we submit the balance referred to in his letter was the sum of \$275.00 which was paid by the \$250.00 payment and \$25.00 payment both being paid to the Baldwin County Bank and which was credited on the note by the Bank and we submit that this is conclusive as to how the payments were made. (Exhibit #5).

As to Exception 6. This relates to the \$250.00 payment which has just been positively explained.

As to Exception 5 and 6, we refer to testimony of Mr. H. D. Ewing, Page 39 of the transcript in which he offers a letter received from H. D. Moorer which reads as follows: "I am in receipt of notice from the Bank stating that the note with a balance of \$275.00 due, will come due on June 17th. I will appreciate you arranging to take care of the payment on that date."

Also immediately following is the answer: On the back of Exhibit 5, which is the note of a thousand dollars mentioned in the \$3,000.00 mortgage set forth in my account filed herein, there is an entry under date of June 16, 1930, of the payment of \$250.00, leaving a balance of \$25.00 due.

According to the Testimony of Mr. Ewing himself, these payments were applied on the \$1,000.00 note which was the last note paid on the \$3,000.00 mortgage. (Exhibit #5).

As to Exception 7: The \$80.00 was applied on the payment of the \$2,000.00 note being the only \$2,000.00 note existing between the parties hereto and secured by the mortgage in the sum of \$3,000.00. The memoranda offered in the evidence by the complainant and admitted by the defendants, discloses that this was applied on this note and the Master has very properly applied it on the \$3,000.00, mortgage which secured the \$2,000.00 note. (See Testimony of Mr. Ewing, Page 50 of Transcript, Exhibit No. 10.)

As to Exception No. 8, as to the payment of \$238.00. See Page 50 of Transcript of Testimony of H. D. Ewing in which he admits that the \$238.00 paid March 26th, 1929 was applied on the account due from H. D. Ewing to H. D. Moorer, last of November, 1928 and had nothing to do with the mortgage of W. D. Stapleton and H. D. Moorer, Page 142 of Transcript of evidence, 3rd question and answer thereto.

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As to attorney's fee referred to in Exception No. 4,  
Respondents cite Speakman V. Oaks, 97 Ala. Page 503.

As to Exception No. 1, Respondents cite Ehrman Vs.  
Alabama Mineral Land Co., 109 Ala. Page 478.

Henry D. Moore

ATTORNEY FOR RESPONDENTS.

BAY MINETTE LAND COMPANY,

Complainant.

versus

W. D. STAPLETON AND  
HENRY D. MOORER,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,  
ALABAMA.

Now comes the complainant and respectfully shows unto the Honorable F. W. Hare, Judge of the Circuit Court of Baldwin County, Alabama, that it is its desire to appeal to the Supreme Court of Alabama from the decree in this case filed on the 25th day of April, 1931, and that it desires to supersede both the execution of the monetary judgment therein rendered against the complainant, and also the decree of the court dissolving the temporary injunction, and ordering the foreclosure of the mortgage, and complainant respectfully shows unto the Court that the defendants can suffer no substantial damages by supersedeas of the judgment in this latter particular, since they will be fully protected by the supersedeas bond to be given in double the amount of the judgment under Section 6133 of the Code:

WHEREFORE the complainant respectfully prays that an order may be made by the Honorable Judge of this Court fixing the amount of the bond to be given under Section 6133 of the Code of Alabama, in order to supersede the execution of said decree in so far as it dissolves the temporary injunction heretofore issued and orders a sale of the property described in the mortgage.

*Harry T. Smith & Caffey*  
HARRY T. SMITH & CAFFEY,  
SOLICITORS FOR COMPLAINANT.

BAY MINETTE LAND COMPANY,

Complainant,

VS.

W. D. STAPLETON AND HENRY D.  
MOORER,

Respondents.

IN THE CIRCUIT COURT OF BALD

COUNTY, ALABAMA.

In Equity.

Bill to redeem by mortgager against mortgagees.

This cause is submitted on exceptions to report of Special Master C. M. A. Rogers, who held a reference under orders of the Court to state an account between the parties and ascertain the amount of the mortgage debt, if any.

I am of the opinion that the several exceptions to the Master's Report are not in form as required by Chancery Rule Nine Three (93).

Mooney Vs. Walter, 69 Ala. 75,  
Crump Vs. Crump, 69 Ala. 156,  
Curtis Vs. Curtis, 180 Ala. 70; 60 South. 165,  
Ex Parte Cairnes, 209 Ala. 358; 96 South. 246,  
Jones Vs. Stollenwerck, 218 Ala. 637, 119 So. 844.

I, therefore, decline to consider any exceptions except Exception Number Four (4), which may possibly come within the rule referred to. This exception complains of the award of attorneys' fees as part of the mortgage indebtedness. I am of the opinion that the mortgage in this case is sufficiently broad in its stipulations with respect to attorneys' fees to cover both fees incurred prior to the filing of the bill and fees for defending this proceeding.

Seed Vs. Brown, 180 Ala. 8; 60 South 98,  
Lampkin Vs. Stout, 199 Ala. 101; 74 South. 239,  
Lampkin Vs. Irwin, 202 Ala. 14; 79 South. 300,  
Thomas Vs. Barnes, 219 Ala. 652; 123 South. 18.

It follows that, in my opinion, the exceptions, and each of them, should be overruled.

The Register will enroll the following decree:

DECREE:

This cause is submitted for decree on Exceptions to the Report of the Special Master filed herein on March 2nd., 1931. Upon consideration of said exceptions I am of the opinion that they



are not well taken.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that said exceptions be, and the same hereby are, overruled and denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the said Special Master's Report be, and the same hereby is, in all things approved and confirmed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the mortgage indebtedness due by complainant to the respondents be ascertained and fixed at the sum of SIX THOUSAND, ONE HUNDRED AND THIRTY-SIX DOLLARS AND SEVENTY-ONE CENTS (\$6,136.71), including interest to date and attorneys' fees as fixed by the Master.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the respondent mortgagees, W. D. Stapleton and Henry D. Moorer, have and recover of the mortgagor, Bay Minette Land Company, a Corporation, the sum of SIX THOUSAND, ONE HUNDRED AND THIRTY-SIX DOLLARS AND SEVENTY-ONE CENTS (\$6,136.71), for which let execution issue if not paid within sixty (60) days from this date.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that said complainant, Bay Minette Land Company, be permitted to redeem the property described in said mortgage upon the payment by complainant of said mortgage indebtedness of SIX THOUSAND, ONE HUNDRED AND THIRTY-SIX DOLLARS AND SEVENTY-ONE CENTS (\$6,136.71), within sixty (60) days from the date of this decree. Upon the payment by complainant within said period of said mortgage indebtedness the respondents are ordered and directed to surrender the notes and mortgage evidencing the principal indebtedness of FIVE THOUSAND DOLLARS (\$5,000.00) under date of December 8th., 1928, marked paid, and to cancel same of record.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the temporary injunction heretofore issued in this cause be, and the same hereby is, dissolved.

In the event that said mortgage indebtedness herein fixed, as well as the costs of court herein taxed, are not paid within the time allowed for payment, the Register of this Court

is ordered and directed to proceed to foreclose said mortgage by sale of said property for the satisfaction of said mortgage debt and all costs in the case.

In the event of a foreclosure by the Register under the authority of this decree he is ordered to advertise said sale, and to generally conduct the same, as provided for by the terms of the mortgage on file in the cause, and upon payment of the purchase money to first pay the costs of this suit, and, second, the mortgage indebtedness with interest to date of such payment to him, and the balance, if any, to be turned over to the mortgagor.

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED by the Court that the Special Master, C. M. A. Rogers, be, and he hereby is, allowed a fee of TWO HUNDRED AND FIFTY DOLLARS (\$250.00) for conducting said reference, to be taxed as a part of the costs

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the complainant, Bay Minette Land Company, a Corporation, be, and it hereby is, taxed with the costs of these proceedings, for which let execution issue.

THIS APRIL 24th., 1931.

F. W. Kure  
Judge.

BAY MINETTE LAND COMPANY,

Complainant.

versus

W. D. STAPLETON AND  
HENRY D. MOORER,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,  
ALABAMA.  
IN EQUITY.

THIS CAUSE COMING ON TO BE HEARD upon the application of the complainant to fix the amount of the bond to be given under Section 6133 of the Code of Alabama, in order to supersede the decree of this Court filed on the 25th day of April, 1931, insofar as it dissolved the temporary injunction heretofore issued and ordered a sale of the property described in the mortgage; and

IT APPEARING TO THE COURT that the purpose of the dissolution of the injunction and the order of sale being simply to provide for the payment of the same monies for which judgment was rendered, which will be fully provided for by the bond to be given, in order to supersede the monetary judgment:

IT IS HEREBY ORDERED that the bond to be given in order to supersede the <sup>dissolution of the</sup> temporary injunction and the order of sale, be and it is hereby fixed at \$13,250.00.

Dated this the 4<sup>th</sup> day of May, 1931.

J. W. Hare  
JUDGE.

BAY MINETTE LAND COMPANY,	)	
COMPLAINANT.	)	
VS.	)	IN THE CIRCUIT COURT OF
W. D. STAPLETON AND	)	BALDWIN COUNTY,
H. D.	)	ALABAMA.
HENRY D. MOORER?	)	
DEFENDANTS.	)	IN EQUITY.

It being made to appear to the Judge of said Court that in the order fixing the amounts of the two supersedeas bonds to be given by the Complainant on appeal in this cause, which said order was dated May 4th., 1931, and filed May 6th., 1931, a mistake was inadvertently made in fixing the amount of the bond to be given in order to supersede the dissolution of the temporary injunction and the order of sale,

It is, therefore, ordered by the Court that said mentioned order be, and same hereby is, amended to read as follows:

This cause coming on to be heard on the application of the Complainant to fix the amount of the bond to be given under Section 6133 of the Code of Alabama, in order to supersede the decree of this Court filed on the 25th. day of April, 1931, insofar as it dissolved the temporary injunction heretofore issued and ordered a sale of the property described in the mortgage; and

Whereas, the said Complainant is required by law to first execute a supersedeas bond in double the amount of the judgment in order to supersede the execution of said judgment, and it appearing to the Court that said ~~judgment~~ bond in double the amount of the judgment to be given as provided by law will amply and fully protect the respondents in the collection of their judgment, and that the second bond provided for in said Section to supersede the dissolution of said temporary injunction and to supersede the order of sale is in substance for the same purpose as the first bond above mentioned,

It is therefore ordered that the bond to be given for the purpose of superseding the dissolution of the injunction and the order of sale be, and the same hereby is, fixed at the sum of Two Hundred Dollars (\$200.00).

Dated this 16th. day of May, 1931.

J. W. Hare  
Judge.

BAY MINETTE LAND COMPANY,

Complainant.

versus

W. D. STAPLETON AND HENRY  
D. MOORER,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

.....

Now comes the complainant in the above entitled cause, Bay Minette Land Company, and takes an appeal to the Supreme Court of Alabama from the decree rendered by the Circuit Court of Baldwin County, Alabama, in the above entitled cause on the 24th day of April, 1931, and files herewith two supersedeas bonds as required by the statute.

*Harry T. Smith & Caffey*  
HARRY T. SMITH & CAFFEY,  
SOLICITORS FOR COMPLAINANT.

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THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1931-32.

1 Div. 686.

Bay Minette Land Company

v.

T. D. Stapleton, et al.

Appeal from Baldwin Circuit Court.

THOMAS, J.

The bill was by a mortgager to prevent foreclosure, and sought injunction and accounting.

The review was of the final decree sustaining the report of the Special Master. It has the effect of a verdict of a jury. - Bidwell v. Johnson, 195 Ala. 547; Ex parte Jackson, 212 Ala. 496, 499; Bailes v. Bailes, 216 Ala. 569; Adalex Const. Co. v. Atkins, 214 Ala. 53.

The appeal is to correct the disallowance of two credits claimed by appellant on the mortgage sought to be foreclosed by sale under its powers. The two findings under the

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application of the law as understood by the Special Master were the disallowance of \$3,000.00 claimed by appellant on the contract or sale of properties to one of the mortgagees, as to certain of the lands mortgaged, and other lands, and the allowance of the sum of \$550.00 as reasonable attorneys' fees incurred in the ascertainment of the mortgage debt. The circuit court declined to consider the exception as to the disallowance of the \$3,000.00 credit, on the theory that the testimony relied upon was not sufficiently noted under Chancery Rule 93.

It will be observed that Rule 93 merely authorized the trial judge to ignore such testimony that was not sufficiently noted, -- that the "Chancellor need not examine testimony not thus noted." It is held, that under the rule it is within the discretion of the Chancellor to consider evidence not noted on exceptions to the register's report. - Faulk & Co. v. Hobbie Groc. Co., 178 Ala. 254. The right to ignore any testimony not sufficiently noted, and the duty to consider that so noted, and the legal principles involved in an exception to a master's report are not to be confused.

There are cases where exceptions are supported, because of error in the law laid down and applied by the Special Master to the facts (as distinguished from exceptions to conclusions or findings of fact) to which the rule does not apply. - McCullum v. McCullum, 218 Ala. 500; Ex parte Cairns, 209 Ala. 353; Lunsford v. Shannon, 221 Ala. 207; s. c. 208 Ala. 409; s. c. 215 Ala. 465. This exception as to the application of the law to the undisputed facts, falls within these cases. The contract of one of the mortgagees with the mortgagor as to a part of the mortgaged lands and other real property rights in adjacent or contiguous lands was not denied, and in fact admitted in answer (and as for that shown by evidence sufficiently indicated), and it appears from the record

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that the deed was tendered in open court by the mortgagor in the presence of the special master, and there was no dispute about the fact of possession or the exercise of the rights of possession by one of the mortgagors. The question of law was presented as to the disallowance of the claim of \$3,000.00, the purchase price of these lands and rights by that mortgagee and his right and interest in the mortgage that can be covered by a decree in equity.

As to the \$3,000.00 item, the mortgage in question was executed to Stapleton and Moorer; its purpose was to secure the repayment of moneys advanced, and mortgagees were jointly and equally interested therein. It is shown by the testimony of Moorer and Stapleton, that they were equally interested in that subject-matter and the consideration of the mortgage. This was it the mortgagor's duty to account to the mortgagees and each of them for his interest in the debt so secured, and the right to have the respective credits, or set-off in equity, on the mortgage as against the complainant's indebtedness, and as to each of the mortgagees.

The cases on mutuality cited by appellee were at law (First Nat. Bank v. Capps, 208 Ala. 207; Brennan v. Gilmore Brothers, 132 Ala. 246; Cannon v. Lindsey, 85 Ala. 198); in a court of equity its decree could have been so molded as to protect Moorer, the co-mortgagee, and not injure him by the allowance of set-off as against his co-mortgagee under the special equities and new consideration of the mortgagor. - Brown v. Scott, 87 Ala. 457.

This is the status shown by the pleadings and evidence. It is further shown, that after execution of the mortgage



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to Stapleton and Meurer, Stapleton entered into a written contract with the mortgagor-appellant to purchase certain of the mortgaged property and other property not embraced therein, consisting of mortgagor's title and interest in a spur and side track on a branch line of the Louisville & Nashville Railroad Company on the opposite side of the addition to the Town of Bay Minette. This contract of date of June 19, 1929, was between "Bay Minette Land Company as seller" and "W. D. Stapleton as purchaser." It is shown that such "purchaser" entered into the possession, and authorized the acts of ownership by his agent over those lands covered by the contract; that he has not paid the purchase price therefor, or credited on this mortgage debt the purchase price thereof; that he thereafter transferred and assigned a portion of the property covered by that contract (and that not embraced in the mortgage in question) to the Louisville & Nashville Railroad Company, and placed it beyond his control or return to plaintiff.

The contract made with the railroad company of date of January 20, 1930, contained many special provisions dealing with the construction of tracks under contracts made by the railroad company dated January 10, 1913 and May 3, 1923, and concludes as follows:

"(22) Whenever, and as often as, the payment of any sums of money due by second party to first party, under any of the provisions of this contract, shall become due, a lien to secure said sums shall forthwith become fixed upon said track material, which lien shall become extinguished only by the payment of the sum or sums due.

"(23) It is expressly understood and agreed that this contract is personal to the second party, and can be assigned only with the written consent of the first party; and that as a condition precedent to such consent, first party will require the assignee to assume any indebtedness due from second party, arising under any of the provisions of this contract."

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Unless complainant is so allowed the set-off, in a court of equity, against his debt to Stapleton on the mortgage, the statu quo as to certain of the mortgaged lands, and that granted to the Louisville & Nashville Railroad Company cannot be returned to complainant. It is but just and equitable that there should be an accounting in this suit for its purchase price as sought in the Bill. This is necessary to effect a clear equity, or to avoid irremediable injustice as to these properties and between the parties indicated. - 47 A. S. R. p. 590, n.; 34 Cyc. 633; Cosgrove v. Crosby, 86 Ind. 511.

The agreement between Ray Minette Land Company and W. B. Stapleton of date of June 19, 1929, contained among others the provision, "That in consideration of the sum of One Dollar to it in hand paid by purchaser, receipt whereof is hereby acknowledged and of the mutual covenants, herein contained, seller agrees to convey to purchaser, by full warranty deed, the real property hereinafter described, and to transfer and assign to the purchaser the other rights herein described, at and for the total purchase price of Three Thousand Dollars (\$3,000.00), same to be paid in cash upon delivery of deed conveying fee simple title to the said real estate, free of all encumbrances, and the delivery of proper transfer and assignment for the other rights, the property covered hereby and to be conveyed and transferred hereunder," describing the property and further providing, "Also all and the entire right, title and interest of the seller in and to the oil track spur and that portion of the side track along the S. W. & Ft. M. Branch of the L. & N. Railroad Company lying opposite the Ft. Morgan Addition to the Town of Ray Minette, lands of Peoples Fertilizer

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Company, and the land adjoining Peoples Fertilizer Company on the North, insofar as such tracks are North of the South line of the real estate hereinabove described, together with all rights and monies to become due under rental agreement with the Pan-American Petroleum Corporation after the date hereof. Upon transfer of such track rights hereunder, purchaser may make a new trackage agreement with the L. & N. Railroad Company in the purchaser's name with respect to the portion of the tracks covered hereby, purchaser being entitled to all benefits seller may have under original contracts insofar as same relate to portions of track covered hereby, including refund of any monies." The agreement concludes as follows: "The purchaser agrees to purchase the above properties under the terms and conditions hereof, same to be consummated upon presentation of proper conveyances and transfers by seller which shall be done within thirty (30) days from this date."

The appellant, in the presence of the special master, tendered to such "purchaser" the deed called for in the contract; that tender was refused upon the ground that complainant had failed to comply with, or live up to the terms of the agreement or contract.

Upon this item of credit by way of set-off against Stapleton's part of the debt, the special master reported:

"I have gone into the matter of the claim of credit of \$3,000.00 as of June 19th, 1929, by Bay Minette Land Company against its mortgage made Messrs. Stapleton and Moorer with considerable care. It is claimed by the complainant that a credit for \$3,000.00 should be entered as of June 19th, 1929, in that the Bay Minette Land Company contracted to sell to W. D. Stapleton a tract of land covered in the mortgage from Bay Minette Land Company to Stapleton and Moorer for the sum of \$3,000.00. It is to be noted, however, that the contract of purchase provided that this amount of \$3,000.00 was

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"to be paid in cash upon delivery of deed conveying fee simple title to the said real estate free of all encumbrances and the delivery of proper transfer and assignment for the other rights, etc." It was also provided in the contract, "The purchaser agrees to purchase the above properties under the terms and conditions hereof, same to be consummated upon presentation of proper conveyances and transfers by seller which shall be done within thirty days from this date."

"The contract of purchase entered into by Bay Minette Land Company and W. D. Stapleton bears date June 19th, 1929. W. D. Stapleton was to receive the property described therein free of all encumbrances within thirty days from June 19th, 1929. The mortgage given W. D. Stapleton and Henry D. Moorer is dated December 8th, 1928, and matured six months after date. It would therefore appear the contract for the sale of the property by Bay Minette Land Company was made on the assumption the mortgage would be paid before a deed was given W. D. Stapleton by the Land Company.

"The mortgage has never been paid and Bay Minette Land Company is in no better position now to carry out its agreement with W. D. Stapleton than it was thirty days after the date of the agreement of sale and purchase. Therefore, I find that Bay Minette Land Company may not at this time insist on W. D. Stapleton carrying out the agreement to purchase. No deed was ever tendered W. D. Stapleton until November 6th, 1930 - the day set for the hearing before the Special Master. That tender was refused, Mr. Stapleton or his counsel saying, in effect, that the complainant had failed to live up to the terms of its agreement.

"I find that Bay Minette Land Company has not so complied with its contract with W. D. Stapleton as to be entitled to any credit on account thereof upon the indebtedness secured by its said mortgage and that the entire property included in the mortgage is bound for the whole debt secured by the mortgage. *Shuman v. Alabama Mineral Land Company*, 189 Ala. 478, 20 So. 112."

The foregoing indicates that the special master refused the set-off or credit as against Stapleton's part of the mortgage debt, not on account of the want of proof, but by reason of an erroneous conclusion of law based upon: (a) the failure of

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the seller to deliver the deed in "thirty days" from date of the contract (June 19, 1929), which authorized the buyer to keep the property and not pay for it, to take possession, exercise and enjoy its ownership, sell a portion to the Louisville & Nashville Railroad Company, deal with the rents, and authorize improvements or superstructures to be placed thereon. (b) Since the contract called for conveyance of unincumbered title by reason of the mortgage in question, the seller was not in a position to comply, and was no reason that a purchaser may take and keep possession without payment of the purchase price for the property. Yet that purchaser took possession of the property, or of the several and separate parts thereof, sold and disposed of a valuable right and portions thereof, improved other portions, dealt with the rentals, retained the property, and asserted in a court of equity in a suit for accounting, redemption and foreclosure, that there was no obligation to pay the purchase price, because of stated defect in the title, against which the conveyance (contracted for) sought to be delivered contained a covenant. This is not the law of the case. The conveyance tendered and in evidence contained the following covenant (against the defect in title in question):

"TO HAVE AND TO HOLD to the said Grantee, his heirs and assigns forever. And the Bay Minette Land Company does covenant with the said Grantee, that it is seized in fee simple of the above described premises; that it has the right to sell and convey the same; that the said premises are free from all incumbrances, and that it will forever warrant and defend the title to the premises hereby granted to the said Grantee, his heirs and assigns, against the lawful claims of all persons."

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The foregoing statement should maintain the incorrectness of these legal conclusions of the special master, which should have been considered and decided adversely by the trial court from the evidence on the exception to the master's report, which is sufficiently and fully noted. These facts are shown by the contract of the Bay Minette Land Company to the purchaser, and the conveyance tendered in court and before the special master from the Bay Minette Land Company to purchaser; its refusal on the grounds indicated, and the other evidence upon the subject were matters of easy access and indicated in the record before us.

The application of the \$3,000.00 purchase price, as against Stapleton's half interest in the debt and mortgage, would leave a balance due, at least, to Moorer.

The purpose of this bill was to ascertain the balance and to whom due, that same may be paid to clear the title of the property conveyed to said purchaser-mortgages, a portion of which he had conveyed to another. That is, the special equity of the bill was for accounting and redemption, the clearing of the incumbrance and giving to such purchaser, his vendee or grantee, a title cleared of the incumbrance as required by the contract of date of June 19, 1929. That is, equitable relief was refused by the special master on the erroneous assumption and application of law that the sale could only be consummated under the contract by delivery of conveyance and cleared title within thirty days.

Time of delivery of the property and the conveyance was not treated by the parties as the essence of the contract; the grantee-purchaser therein did not insist upon delivery of the

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conveyance per contract within the time and that the failure thereof destroyed the seller's rights. This construction of the contract cannot be refuted since the purchaser took possession and conveyed part of the property to the railroad corporation, allowed another to erect a turpentine still on other of the lots, and failed to pay the purchase price, -- that is, so dealt with the property, or a substantial part thereof, as that its statu quo cannot be restored, and having so acted is estopped in this court (Ivey v. Hood, 202 Ala. 121) to refuse the proffered conveyance and deny the set-off on his part of the mortgage debt.

A purchaser who thus waives provisions of a contract inserted for his sole benefit, and by the substantial change destroys or disposes of a substantial part of the property, and after the time limit, enters into the possession and deals with the property as his own, may not thus retain the property and resist payment of the purchase price, on account of defect in title, in a suit having for its object the clearing of that title, -- the purchaser being aware of such defect when he so acted as to that subject-matter, treating it as its owner in possession. He may not for such reason thereafter rescind the conveyance. - Burkett v. Munford, 70 Ala. 428; Strong & Wife v. Waddell, 86 Ala. 471; Holmes v. Richards, 67 Ala. 577; Barnett v. Gaines & Townsend, 8 Ala. 373; Beck v. Simmons & Kornegay, 7 Ala. 71.

It is established in this jurisdiction that a purchaser who accepts possession with knowledge of an existing defect in title or an encumbrance, has no right of rescission, and only in a proper case has a recoupment. - Varnon v. Nabors, 189 Ala. 464. See authorities collected in 34 A. L. R. 1325, Note and 1326 Note.

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It is a principle of universal recognition, "that if a party desires to abandon or rescind a contract by reason of a breach of it by the opposite party, or his inability to comply, [he] must act promptly and decidedly, upon the first discovery of the cause of rescission." - Coleman v. First Nat. Bank, 115 Ala. 307. The mortgagee in question did not so act as to the property, having full knowledge of the defect or failure in the premises. - Corley v. Vizard, 203 Ala. 564.

It is further established that the execution of such contract vested the purchaser with the equitable title (Love v. Butler, 129 Ala. 531; Veitch v. Woodward Iron Co., 200 Ala. 358; Graham v. Graham, 205 Ala. 644; Smith v. Finion, 207 Ala. 122), and thereafter the seller held the legal title in trust for the buyer, and the latter held in trust, the purchase money for the seller. - Rankin v. Dean, 157 Ala. 490, 492; Harrison v. Sollie, 206 Ala. 284; Robinson v. Shearer, 211 Ala. 16; Sellers v. Hayes, 17 Ala. 749; 1 A. L. R. p. 1330-n; Code §8034, subdiv. 5.

The parties (seller and purchaser) did not regard time as the essence of the contract. However, in a case where time is the essence of the contract, and the buyer treats the contract in force after the expiration thereof, he cannot subsequently decline to receive performance within a reasonable time. - Lowy v. Rosenkrantz, 196 Ala. 337, 342, and authorities; Phillips v. Sinssey Coal Min. Co., 218 Ala. 396; Sixale v. Ball, 171 Ala. 568, 571; Stewart v. Cross, 66 Ala. 22; Davis v. Robert, 89 Ala. 402; Hurst v. Thompson, 73 Ala. 158; Acker v. Bender, 33 Ala. 230; Andrews, Allen & McCreffield v. Tucker, 127 Ala. 602. That



12.

is the saying, that one may not claim benefits of a contract (as Stapleton, the instant purchaser did in dealing with the railroad company and him who erected the turpentine still, etc.) and thereafter assert his disaffirmance. - Dominay v. Johnson-Brown Co., 219 Ala. 686; Phillips v. Sipsey Coal Min. Co., 218 Ala. 296; Lysle Milling Co. v. North Alabama Groc. Co., 201 Ala. 222.

This court has further held, in a proper case, that rescission cannot be supported until the party complaining of the delay or failure calls upon the other party to perform, and a reasonable time is given therefor, after notice that the matter is desired to be closed according to the same contract. - J. E. Ackley & Co. v. Hunter-Bann & Co.'s Company, 165 Ala. 295, 309; Elliot v. Howison, 146 Ala. 570; McFadden v. Henderson, 128 Ala. 221; American Finance Corp. v. Karbrough, 135 So. 448, 451.

This is sufficient to indicate that where this purchaser had taken possession of the property under a contract, used it as his own after the expiration of "thirty days," and long thereafter, and made no demand for delivery of the deed, he will not be permitted to rescind the contract when the deed is tendered on the trial. In this ruling there was error of law on the part of the special master, - in holding that the purchaser could so rescind, and in disallowing the set-off of the purchase price as against said mortgagee-purchaser's interest in the mortgage. And for like reason there was error in the final decree in not passing upon such error of law and in the disallowance of the \$3,000.00 credit as against Stapleton's interest in the mortgage, no superior equity being shown on that interest in favor of his co-mortgagees.

It follows from the foregoing that there was error in the allowance of the sum indicated as reasonable solicitor's fee. The mortgage provides as to this: "In event of default in the payment at maturity of said mortgage debt, or any amount secured thereby, mortgagees are hereby authorized to sell said property, at auction, for cash after give(n) notice by advertisement, once a week for three consecutive weeks in any newspaper then published in Baldwin County, Alabama, and to make proper conveyance to purchaser, and the proceeds of sale to apply first, to the payment of the costs of said sale, including a reasonable attorney's fee." The matter has been frequently considered by this court. -

Anniston Bank & Loan Co. v. Lapsley, 200 Ala. 377; Cooper v. Parker, 176 Ala. 122; Kelley v. Carmichael, 221 Ala. 371, 373.

And the required pleading and proof was adverted to in Budley et als v. Colonial Lumber Co., 137 So. 429. It may be said such allowance as per contract was in contemplation of the parties and was to indemnify the mortgagees or payees against such reasonable expense incurred or contracted in the collection of a foreclosure as provided in the contract.

This will be sufficient to guide upon another trial where there is the foregoing application of set-off or payment upon the purchaser's part of the mortgage debt.

The decree of the trial court is reversed and the cause is remanded for further decree pursuant to the foregoing.

Reversed and Remanded.

Anderson, C.J., Bouldin and Brown, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 685,  
Bay Minette Land Co., Appellant,  
vs.  
W. H. Stapleton et al, Appellee,  
From Baldwin Circuit Court.

The State of Alabama, }  
City and County of Montgomery. }

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 13 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme  
Court of Alabama, at the Capitol, this the

22 day of January, 1932

Robert F. Ligon  
Clerk of the Supreme Court of Alabama.

The Supreme Court of Alabama

October Term, 1931-2

1 Div., No. 685-

Bay Minette Land

Co.

Appellant,

VS.

W. D. Stapleton

et al

Appellee.

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY, 1929

Filed Jan 25th 1931  
D. W. Keen  
Register

RAY MINETTE LAND COMPANY,

Complainant.

versus

W. D. STAPLETON AND HENRY D.  
MOORER,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY,

ALABAMA.

IN EQUITY.

Now comes the Complainant in the above entitled cause and by leave of Court first had amends its complaint, without prejudice to the injunction heretofore issued thereunder, in the following manner, that is to say:

1. By adding paragraph "8" in words and figures as follows, namely:

"8. Complainant further shows unto the Court that recently it has become informed and now alleges that J. T. Bradley, who resides in Baldwin County, Alabama, and is over the age of twenty-one (21) years, claims to hold and own the promissory note for \$5,000.00 secured by the mortgage which is the subject matter of this bill,,that is to say, that the said J. T. Bradley claims to hold the said note as in hypothecation or pledge to secure a note for \$3,000.00 by the respondent Henry D. Moorner to the Baldwin County Bank, which note, with the said collateral, has been assigned to the said J. T. Bradley by the Baldwin County Bank, and in view of the fact that the said J. T. Bradley so holds the said note, it is necessary that he be made a party defendant to this cause, in order that the court's decree, in respect to the payment and cancellation of the said note, and with respect to the foreclosing of the said mortgage, in the event that the said note be not paid, may operate and be effective against him also."

2. By changing the "Prayer for Process" so as to make the same read as follows:

BAY MINETTE LAND COMPANY,

Complainant,

VS.

W. D. STAPLETON, HENRY D.  
MOORER, and J. T. BRADLEY,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. \_\_\_\_\_.

TO BAY MINETTE LAND COMPANY, a CORPORATION, OR TO HARRY T. SMITH  
AND CAFFEY, THEIR SOLICITORS OF RECORD:

TO W. D. STAPLETON AND HENRY D. MOORER:

You are hereby notified that the Respondent and Cross  
Complainant, J. T. Bradley, has moved for and obtained an order  
permitting and directing an oral examination of the witness named  
in the attached copy of the motion therefor, the said examination  
of said witness to be oral and before the Register of this Court at  
the time and place stated in the said motion, a copy of which is  
hereto attached and made a part of this notice.

Stevens, Mc. Curry, Mc. Leod, Hood & Turner

J. B. Daskin  
Solicitors for the Respondent and  
Cross Complainant, J. T. Bradley.

T. W. Pickens  
Register.

We, Harry T. Smith and Caffey, as Attorneys for the  
Complainant and Cross Respondent, Bay Minette Land Company, a Corp-  
oration, do hereby accept service of the foregoing requirement of  
the oral examination of the witness named in said motion and notice  
thereof, and waive any and all further notice of said examination.

"PRAYER FOR PROCESS"

"And your orator respectfully prays this Honorable Court that the said W. D. Stapleton, Henry D. Moorer and J. T. Bradley be made parties respondent to this your orator's bill of complaint, and that due process of subpoena issue to and be served upon them in accordance with the course and practice of this Honorable Court."

3. By inserting in the "Prayer for Relief" between the words "be issued to the said W. D. Stapleton and Henry D. Moorer" and the words "pending this suit enjoining them from selling" the following: "and J. T. Bradley".

4. By adding to the "Prayer for Relief" just before the words: "and your orator prays for such other and further relief as it may be entitled to receive, the premises considered" the following: "and that the said J. T. Bradley may be required to appear and propound whatever claim he has to this indebtedness."

  
HARRY T. SMITH & CAFFEY,  
SOLICITORS FOR COMPLAINANT.

FOOT NOTE:-

Each of the respondents, namely,- W. D. Stapleton, Henry D. Moorer and J. T. Bradley,- is required to answer each and every allegation of the above and foregoing bill of complaint as amended from paragraph one to paragraph eight, both inclusive, but not under oath, oath as to such answers being hereby expressly waived.

  
HARRY T. SMITH & CAFFEY,  
SOLICITORS FOR COMPLAINANT.

Dated this the 27th day of June, 1932.

Harry Smith Caffey

Solicitors for Complainant and Cross  
Respondent, Bay Minette Land Company.

I, T. W. Richerson, Register, do hereby certify that I have this day entered a copy of the foregoing notice together with a copy of said requirement for oral examination on the order book of the Register of this Court, and I direct that the adverse parties have three days' notice of said examination.

Dated this the 27 day of June, 1932.

T. W. Richerson

Register.



BAY MINETTE LAND COMPANY,

Complainant,

VS.

W. D. STAPLETON, HENRY D.  
MOORER, and J. T. BRADLEY,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. \_\_\_\_.

Comes the Respondent and Cross Complainant, J. T. Bradley, and shows to the Register that he requires an oral examination of the witness hereinafter named, and therefore moves the Register for an oral examination of said witness, the same to be examined orally before the Register of this Court at the time and place hereinafter shown:

The said Respondent and Cross Complainant moves for an oral examination of J. T. Bradley, said examination to be before the Honorable T. W. Richerson, Register of this Court, at his office in Bay Minette, Alabama, on the first day of July, 1932, at two-thirty o'clock, P. M.

Stinson, M. C. Corum, M. S. Lord, Hood & Turner

L. B. B. Lockburn

Solicitors for Respondent and Cross  
Complainant, J. T. Bradley.

Original

MOTION FOR AND NOTICE OF RE-  
QUIREMENT OF ORAL EXAMINATION  
OF WITNESS.

BAY MINETTE LAND COMPANY,  
Complainant,

Vs.

W. D. STAPLETON, HENRY D.  
MOORER AND J. T. BRADLEY,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. \_\_\_\_\_.

Filed on this the 27th day of  
June, 1932.

*J. W. Richardson*

Register.

To printed June 27<sup>th</sup> 1932  
by Sewing Copy of within Notice  
On W. D. Moorer & W. D. Stapleton  
Respondents  
W. R. Everett Sheriff  
by M. H. Williams  
Ds

-----  
Bay Minette Land Company, :  
Complainant, :  
-vs- :  
W. D. Stapleton, Henry D. :  
Moorer and J. T. Bradley, :  
Respondents. :  
-----

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

The respondent J. T. Bradley, who is over the age of twenty-one years and resides in Baldwin County, Alabama, for answer to the bill of complaint as last amended by the amendment this day filed in the above stated cause answering says:

1. This respondent, not having been a party to the transactions alleged in the original bill of complaint and the first amendment thereto, has no personal knowledge of the matters and things dealt with in paragraphs 1 to 7, both inclusive, of the said bill of complaint, but the record shows that it has been established that complainant has a complete set-off as to the respondent Stapleton against his half of the indebtedness secured by the said mortgage and is entitled to certain credits upon the other half of said indebtedness as against the respondent Moorer, and this respondent concurs in said ascertained status and admits the allegations upon which the same is founded.

2. Answering paragraph 8 of the said bill of complaint added by the amendment this day filed, this respondent alleges as follows: On or about the 10th day of November, 1931, this respondent purchased for value from Baldwin County Bank a note executed to it by the respondent Henry D. Moorer under date of November 2nd, 1931, for Three Thousand Dollars payable on January 2nd, 1932. The said note was in the form customarily used for collateral notes and described the collateral as "Note Attached." There was attached to the said note of the said Moorer so purchased by this respondent a note for Five Thousand Dollars executed by the complainant Bay Minette Land Company to the order of W. D. Stapleton and Henry D. Moorer under date of December 8th, 1928, and payable on the 8th day of June, 1929. The last mentioned note was endorsed in blank by W. D. Stapleton and Henry D. Moorer. The said Three Thousand Dollar note of the said Henry D. Moorer, with the said Five

Thousand Dollar collateral note attached thereto, was endorsed without recourse and delivered to this respondent by said Baldwin County Bank at the time of the purchase thereof by this respondent as aforesaid, and this respondent still holds the said Three Thousand Dollar note with the said Five Thousand Dollar collateral note attached thereto. The aforesaid Five Thousand Dollar collateral note executed by the complainant as aforesaid is the note which evidences the indebtedness secured by the mortgage of the same date executed by the complainant Bay Minette Land Company as alleged in the bill of complaint in this cause, and under the facts above alleged this respondent stands entitled to whatever the complainant should pay in order to redeem from the said mortgage, or to the proceeds of any foreclosure of the said mortgage if the same go to foreclosure.

3. This respondent is informed that the rulings and adjudications so far made in this cause establish in effect that the complainant has a valid off-set against the respondent W. D. Stapleton in an amount greater than one-half of the said Five Thousand Dollar note with the interest thereon, that such off-set is applicable against the said Five Thousand Dollar note to the extent of one-half thereof, that the complainant is entitled to credit for certain small payments made to the respondent Henry D. Moorner, and that the remainder of the indebtedness evidenced by the said Five Thousand Dollar note with the interest thereon is due and owing by the complainant and stands secured by the said mortgage. This respondent further shows and alleges that he having acquired as aforesaid the said note of the said Henry D. Moorner with the said note of the complainant attached thereto as collateral security therefor, stands in this Court of Equity as the payee of the entire amount which now may be owing by the complainant upon the aforesaid note.

4. This respondent submitting himself to the jurisdiction of this Honorable Court and offering to do equity in the premises alleges and avers that he is entitled to have and receive affirmative relief herein to the extent of being awarded and paid all amounts up to the sum of Three Thousand Dollars with interest thereon from January 2nd, 1932, which may be finally decreed to be payable by the complainant in redemption from the said mortgage or which may be realized from a foreclosure of the lands embraced in the said mortgage in the event that the same go to foreclosure, and consequently this respondent makes this his answer also his cross-bill against the complainant, the said Bay Minette Land Company, and the respondents W. D. Stapleton and Henry D. Moorner.

Wherefore, the premises considered, this respondent and cross-complainant respectfully prays the Court as follows:

Prayer for Process.

That the said Bay Minette Land Company, W. D. Stapleton and Henry D. Moorner be made parties defendant to this cross-bill and that the usual process of this Honorable Court forthwith do issue to each of them.

Prayer for Relief.

This respondent and cross-complainant further prays the Court to adjudge and decree that he is entitled to all sums up to Three Thousand Dollars plus interest thereon since January 2nd, 1932, which the complainant may pay into this Court in redemption from the said mortgage, or which may be realized from a foreclosure sale in the event that the mortgage be foreclosed, that the amount to be paid by the complainant in order to effect such redemption be ascertained and decreed, that the time allowed to the complainant for the making of such payment be fixed at such reasonable period as to the Court may seem just and proper, that it be further decreed that in the event of a failure

by complainant to make such payment the mortgage described in the bill of complaint in this cause be foreclosed according to the usual practice of this Honorable Court in foreclosure suits, and that the proceeds of said redemption, or of the said foreclosure, as the case may be, up to the aforesaid sum of Three Thousand Dollars with interest from January 2nd, 1932, be decreed to be paid to this respondent and cross-complainant upon his depositing with the Register of this Court the aforesaid collateral note, which this respondent and cross-complainant hereby offers to do upon receiving such payment.

This respondent and cross-complainant prays for all such other, further and general relief as he may be equitably entitled to, the premises considered.

*Stevens McConry McLeod Goodet Turner*  
Solicitors for J. T. Bradley, respondent  
and cross-complainant.

FOOTNOTE:

The said Bay Minette Land Company, W. D. Stapleton and Henry D. Moorer are each required to answer each paragraph of this cross-bill numbered from 1 to 4, both inclusive, but not under oath, the benefit whereof is hereby expressly waived.

*Stevens McConry McLeod Goodet Turner*  
Solicitors for J. T. Bradley, respondent  
and cross-complainant.

BAY MINETTE LAND COMPANY,  
Complainant.

VERSUS:

W. D. STAPLETON AND HENRY D.  
MOORER,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,

ALABAMA.

IN EQUITY.

Now comes the complainant in the above entitled  
cause and answering the cross-bill of J. T. Bradley says that  
it admits all of the allegations of said cross-bill.

*Harry Smith Laffey*  
SOLICITORS FOR COMPLAINANT.

BAY MINETTE LAND COMPANY,

Complainant,

VS.

W. D. STAPLETON, HENRY D.  
MOORER AND J. T. BRADLEY,

Respondents.

IN THE CIRCUIT COURT OF


BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 927.

DECREE PRO CONFESSO ON PERSONAL SERVICE.

In this cause, it being made to appear to the Register that a summons was served upon the said Bay Minette Land Company, a Corporation, W. D. Stapleton and Henry D. Moorner, by the Sheriff of Baldwin County, Alabama, on the 18th day of March, 1932 requiring them to appear and plead, answer or demur to the Cross Bill in said cause of the Respondent and Cross Complainant, J. T. Bradley, within thirty days from the service of said summons, and the said Cross Respondents and each of them having failed to plead, answer or demur to the said Bill to the date hereof: It is now, therefore, on motion of said Respondent and Cross Complainant, ordered and decreed that the said Cross Bill in this cause be, and it hereby is, in all things taken as confessed against the said Bay Minette Land Company, a Corporation, W. D. Stapleton and Henry D. Moorner, and each of them, Cross Respondents aforesaid.

WITNESS my hand this 25th day of May, 1932.



Register in Chancery, Baldwin  
County, Alabama.



DECREE PRO CONFESSO.

BAY MINETTE LAND COMPANY,  
Complainant,

VS.

W. D. STAPLETON, HENRY D.  
MOORER AND J. T. BRADLEY,  
Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 927.

Dated this the 23rd day of May,  
1932.

RAY MINETTE LAND COMPANY,

Complainant,

VS.

W. D. STAPLETON, HENRY D.  
MOORER AND J. T. BRADLEY,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NO. 927.

MOTION FOR DECREE PRO CONFESSO.

Motion is hereby made for a decree pro confesso against Ray Minette Land Company, a Corporation, W. D. Stapleton and Henry D. Moorer, and each of them, Cross Respondents in the above entitled cause, on the ground that more than thirty days have elapsed since service of summons upon the said Cross Respondents; that the said summons was duly served according to law and that the said Cross Respondents and each of them have failed to plead, answer or demur to the Cross Bill of J. T. Bradley, Respondent and Cross Complainant in the said cause to this date.

Dated this the 23rd day of May, 1932.

Sturges, M. C. Curry, M. C. Lord, H. H. Turner

J. B. Blackburn

Solicitors for J. T. Bradley,  
Respondent and Cross Complainant.

MOTION FOR DECREE PRO CONFESSO

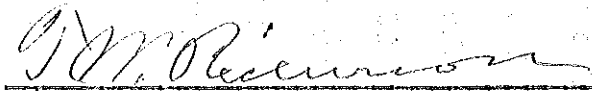
BAY MINETTE LAND COMPANY,  
Complainant,

VS.

W. D. STAPLETON, HENRY D. MOORER  
AND J. T. BRADLEY,  
Respondents.

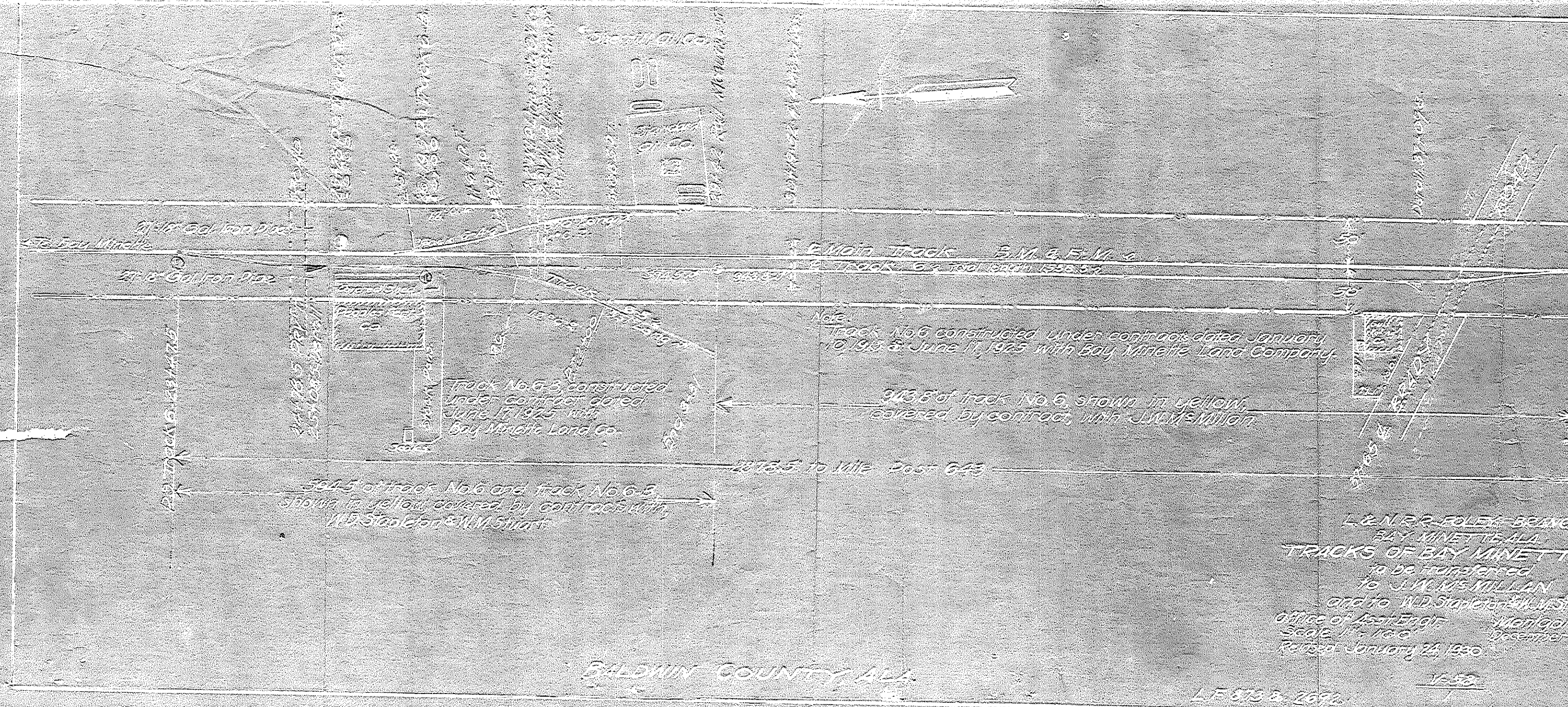
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NO. 927.

Filed this the 23rd day of May,  
1932.



Register.





L & N R FOLEY BEARING  
BAY MINNETTE, ALA.  
TRACKS OF BAY MINNETTE  
to be transferred  
to J. W. Mc MILLAN  
and to W. D. Stapleton, W. M. S.  
Office of Asst Engr. Menlo Park  
Scale 1/4" = 16' 6"  
December  
Revised January 24, 1930

LF 315 & 2692





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